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Prosecution of claims against the U.S.

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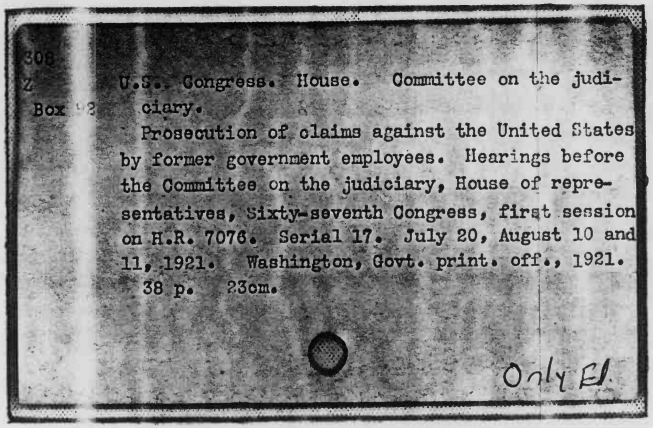

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PROSECUTION OF CLAIMS AGAINST THE UNITED STATES BY FORMER GOVERNMENT EMPLOYEES

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HEARINGS

BEFORE THE

COMMITTEE ON THE JUDICIARY

HOUSE OF REPRESENTATIVES

SIXTY-SEVENTH CONGRESS
FIRST SESSION

ON

H. R. 7076

Serial 17

JULY 20, AUGUST 10 AND 11, 1921

WASHINGTON
GOVERNMENT PRINTING OFFICE
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COMMITTEE ON THE JUDICIARY.

HOUSE OF REPRESENTATIVES.

SIXTY-SEVENTH CONGRESS.

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PROSECUTION OF CLAIMS AGAINST THE UNITED STATES BY FORMER GOVERNMENT EMPLOYEES.

SERIAL 17.

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Thursday, July 20, 1921.

The committee this day met, Hon. Andrew J. Volstead (chairman) presiding.

The CHAIRMAN. Mr. Assistant to the Attorney General, I would like to ask your views on the bill, H. R. 7076, introduced by Mr. Edmonds, to amend section 190 of the Revised Statutes, providing for the punishment of certain parties who are former employees of the Government.

STATEMENT OF MR. GUY D. GOFF, THE ASSISTANT TO THE ATTORNEY GENERAL OF THE UNITED STATES.

Mr. GOFF. Mr. Chairman, is there any specific question you desire to have me discuss?

The CHAIRMAN. We would like to know in a general way, from your general knowledge of the situation, whether there is any necessity for this sort of legislation?

Mr. WALSH. Has this bill been referred to the Attorney General for an opinion and report?

Mr. GOFF. Yes. I might state to the committee that this bill, which is aimed at preventing persons who have been connected with the Government from re-

signing and taking claims against the department with which they have been connected, was brought to my attention six weeks ago. I discussed the bill with the Attorney General. We found that the Treasury Department had issued, some time ago, a set of rules, and if I had known that this matter might come up this morning I would have brought them to the committee.

The rules of the Treasury Department are very broad and most prohibitive. They deny to anyone previously connected as an employee or official with the Tax Division of the Internal Revenue Bureau or the Treasury Department in its several divisions upon severing their relations taking cases against the department within a definite limited time. I have had some personal experience in this connection with the United States Shipping Board. Many men who had been connected with the board severed their connections and then solicited claims against the United States Shipping Board, and because of their superior if not intimate knowledge of the claim due to their having in many instances had the facts before them, in their official capacity they were instantly retained and generally sought after by those with claims to present.

The Shipping Board adopted a rule, more or less enforced—not always, and not as strictly as it should have been—which prohibited such persons from appearing before the board on any such matters.

Mr. HERSEY. Were there any penalties attached to that rule?

Mr. GOFF. The rule simply denied the right of appearance to anyone who had been in any of the departments or divisions within a period of two years. The rule was based on the principle that it was neither ethical nor proper that a former employee should appear and press such a claim.

Mr. HERSEY. The rule simply denied such men the right to appear before the board?

Mr. GOFF. It denied them the right to appear before the board, and the board said if it had the right to promulgate its own rules and prescribe its forms of procedure.

We have had several cases of a similar character in the department of Justice and in the office of the Alien Property Custodian. There have been men connected with the Alien Property Custodian's office who had severed their connection and settled in Washington and gone to New York and solicited claims. The Department of Justice has the duty under the law to pass upon every claim allowed by the Alien Property Custodian and to consider and approve it before the Secretary of the Treasury is permitted to pay it.

It has fallen to my duty recently to hear the legal arguments upon the part of claimants against the Alien Property Custodian, and I must say I have been benefited and materially assisted by the arguments of such attorneys. They thoroughly understood the law and largely because of their prior connection with the Department of Justice or with the Alien Property Custodian's office.

The Attorney General has recently decided that he should adopt and issue rules similar to those issued by the Secretary of the Treasury, which prohibit such attorneys appearing before the department and pressing these claims. The statement has been made to the department that many of the attorneys so appearing were personally cognizant of all the facts as well as the merits of these claims while they were connected as employees with the Department of Justice.

Mr. HERSEY. Those rules are in force now?

Mr. GOFF. Yes.

Mr. HERSEY. They are not in force at the present time?

Mr. GOFF. They are in force at the present time.

Mr. HERSEY. Would they not take the place of this bill, except in so far as the penalty is concerned?

Mr. GOFF. A department rule can not take the place of a general law of Congress. It is moral rather than legal. It appeals only to the ethically inclined.

Mr. WALSH. Have you examined this bill carefully?

Mr. GOFF. I have.

Mr. WALSH. The provisions of this bill would not apply to employees of the Emergency Fleet Corporation, would they?

Mr. GOFF. They would not.

Mr. REAVIS. It is of more concern whether the claim was pending while they were connected with the department; it does not make any difference whether the claim was pending at the time when such a man was not attached to the department?

Mr. GOFF. No, sir.

Mr. REAVIS. It may be a claim that was made after he severed his connection with the department?

Mr. GOFF. Yes, sir.

Mr. REAVIS. Why do you fix the period of three years?

Mr. GOFF. This bill was not drawn by the Department of Justice.

Mr. REAVIS. Do you know why the time was fixed at three years?

Mr. GOFF. I do not know. I take it that three years was put in the bill for the reason that this period would possibly cover all claims then pending before the department during the incumbency of the employee subsequently representing the claimant. Claims that might come up in the future would surely not be within the purview of this bill, and they should not be within its prohibition.

Mr. REAVIS. The purpose of the bill, I presume, is to prevent the use of information, confidential in character, that would come to an employee because of his relation to the Government, to be used antagonistic to the Government?

Mr. GOFF. Exactly.

Mr. FOSTER. It is to discourage what we call in Ohio "ambulance chasing"?

Mr. GOFF. That is it exactly, and also to prevent a man from being on each side of the lawsuit at approximately the same time.

Mr. WALSH. Do you think some legislation is required in connection with this matter?

Mr. GOFF. I do; yes, sir.

Mr. WALSH. Have you any suggestions to make as to any changes in the phraseology of the bill? Have you considered it with that in view?

Mr. GOFF. I have not considered that. I did consider the question which you suggested in reference to the Emergency Fleet Corporation. You have undoubtedly read the case of the United States versus Strang et al., which apparently held very much against our views that the Emergency Fleet Corporation is a private corporation.

Mr. WALSH. I was wondering whether that decision might not be overcome by legislative enactment.

Mr. GOFF. I think it could be; yes, sir.

Mr. SUMNERS. I think I know what you have in mind, but may I ask you this question? From the standpoint of the Government, from the standpoint of justice, what bad effect does this practice have?

Mr. GOFF. Do you want me to answer generally or specifically?

Mr. SUMNERS. I would not like to take very much time on that.

Mr. GOFF. I think initially it has a demoralizing effect. It breaks down and lowers to the point of sordidness a man's ideals of professional ethics. By way of example, if an attorney has been confidential adviser of the Pennsylvania Railroad for a period of years, been its general counsel, known all about its methods of procedure and its sacred secrets, known every little rat hole and the size of the weasel that should go into it, that for him to separate himself from the railroad and begin to fight it in those particulars and on matters in which possibly he had laid down the principles involved, would be neither professional nor ethical but simply prostitution of the opportunities that came to him as a member of a great profession. In other words, no lawyer would take a case against a former client growing out of his previous retainer and involving the same or related transactions. He would by so doing court disbarment, and no doubt win it. Why should he be permitted to make an exception and a victim out of his country?

Mr. SUMNERS. It would make it possible to put the Government's case in a bad position if a man would go to the other extreme, so he could take advantage of it on the other side?

Mr. GOFF. Yes.

Mr. FOSTER. It also invites them to make an effort to get that kind of cases?

Mr. GOFF. Yes, sir.

Mr. WALSH. You served as counsel for and also as a member of the Shipping Board?

Mr. GOFF. Yes.

Mr. WALSH. And anybody who had been employed as counsel for or as a member of the Shipping Board would necessarily have information with reference to claims which, if he severed his connection with the Shipping Board and desired to indulge in that practice he could sell to other attorneys or act as senior counsel, giving them an advantage over the present Shipping Board, that one not so situated may not be able to get or might not know of, and he would have the Shipping Board at a disadvantage if it were permissible under the law?

Mr. GOFF. I think that is an admirable statement and absolutely correct. And if I might add this further view to yours, Mr. Walsh, in the decision of every such question there is frequently involved a grave doubt, if it is a matter of close decision, and a former counsel or attorney or employee might be possessed of just that question of doubt which he could sell and which might possibly turn the scale in the cases he was presenting. In other words, it is using confidential knowledge acquired in the employ of the Government and turning it against the Government. The country does not educate its departmental attorneys or employees for such purposes.

Mr. SUMNERS. I would like to ask you another question along the same line. To what extent it is practiced, I do not know, but I have heard from business men that former employees of the Government, connected with the enforcement of the income-tax law and similar laws, have, while engaged in the service of the Government, really been canvassing for business on the other side, in the event that they should sever their connections with the Government. I have not examined this bill, but would it cover a case of that sort and prevent that kind of action?

Mr. GOFF. Yes, sir. Along the line of your suggestion, it has proved embarrassing to the Department of Justice. In some cases that have come before it the assertion has been made that the cases had been purposely decided against the claimants previously in order that they might be held up until such time as the person or persons so deciding them was a free lance in the body politic and could take the cases and overcome, by the application of proper principles, the decisions then made. Personally I do not believe it, but it is the current rumor and is, of course, possible. You said you had heard rumors from business men, and I am giving you similar rumors. I do not remember that any case of that kind has come to my attention, but people have said to me in decisions which I have rendered: "Did you know that such and such a situation existed; that this case was incorrectly decided, and purposely so?' And I have said: "No; and it is immaterial whether it was or not; it is at the present time correctly decided, and if the other situation existed, it is now immaterial, no matter how reprehensible and criminal it may have been at the time."

Mr. WALSH. Do you think this bill might be amended to make it unlawful for a person to solicit employment as counsel? This says, "To act as counsel." Would you think it ought to go as far as prohibiting the soliciting of employment as counsel or agent?

Mr. GOFF. Yes. I understand that many men who have been in the employ of the Government, Mr. Walsh, have joined firms, where they will advise the member of the firm who will appear, but they will not appear themselves. I have had such cases brought to my personal attention. They do not purpose to appear in person, but they intend to advise members of the firm who will appear, and I do not see why we could not go to that length if the rights of the Government are to be properly and really conserved as vigorously protected as the interests of a private litigant are always safeguarded under similar conditions.

Mr. WALSH. They procure the information made use of by one of their associates?

Mr. GOFF. Yes; they do.

Mr. GOODYKOONTZ. You might make it unlawful for such a person to appear.

Mr. HERSEY. You might make it unlawful for the firm to appear where one of the members of the firm had been in the employment of the Government.

(Thereupon the committee adjourned.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Wednesday, August 10, 1921.

The committee met at 10.30 o'clock a. m., Hon. Andrew J. Volstead (chairman), presiding.

The CHAIRMAN. Mr. Edmonds, we will be pleased to hear you now.

STATEMENT OF HON. GEORGE W. EDMONDS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF PENNSYLVANIA.

Mr. EDMONDS. Mr. Chairman and gentlemen, I would like to bring to your attention H. R. 7076, a bill to amend section 190 of the Revised Statutes of the

United States, and before going any further I would like to ask you to cut out, in line 6, the words "after the 1st day of January, 1918," which do not make good sense in the context and do not mean anything in the bill.

The CHAIRMAN. I think they would mean a good deal in the bill.

Mr. EDMONDS. They would mean a good deal and would really defeat the purpose of the bill. The reason I put a date in the bill was because the original section, section 190, contained a date, and I followed that section without seeing just how it would read.

In regard to this bill, which prevents any officer or employee of any department of the Government, including commissions, from prosecuting claims against the Government for three years after he has been in office, I would like to state that as chairman of the Committee on Claims, I have see quite a bit of this, and it looked to me as if it came with very bad grace to have these men appear before the different departments of the Government and before committees of Congress to prosecute claims that originated in their departments, and in some cases under contracts written by the very men who were prosecuting the claims.

Mr. WALSH. Why did you not include Members of Congress in the bill?

Mr. EDMONDS. Well, I would like to state that a Member of Congress is an elected officer and is a part of the legislative branch of the Government that does not originate contracts, although contracts are originated under appropriations made by Congress, and I want to say, personally, should it be the desire of the committee to include them, I would not oppose it. I am not an attorney myself, and naturally, I would not have any claims against the Government after I left Congress, but you gentlemen who are attorneys would probably know whether that was a better thing to do or not.

Mr. MICHENER. You would not object to including them in the bill?

Mr. EDMONDS. I would not object to that.

Mr. DYER. Both Senators and Representatives.

Mr. EDMONDS. Senators and Representatives.

Noticing that this was going on and having the matter called to my attention by some of the Members of the House, I went back and found that we had a section in relation to this matter, section 190, which provides:

"It shall not be lawful for any person appointed after the 1st day of June, 1872, as an officer, clerk, or employee in any of the departments, to act as counsel, attorney, or agent for prosecuting any claim against the United States which was pending in either of said departments while he was such officer, clerk, or employee, nor in any manner nor by any means, to aid in the prosecution of any such claim, within two years after he shall have ceased to be such officer, clerk, or employee."

There is no penalty attached to that provision. The result was that if a man was friendly with the departments they did not put section 190 into effect. In the case of the Shipping Board, I know that Mr. Payne was the first man who put it into effect. Attorneys who had been with the Shipping Board and who had left the board had gone out, established offices in the city here, and are to-day, I presume, prosecuting cases against the Shipping Board on contracts that were made while they were in office or contracts that they had a hand themselves in making. Mr. Payne would not recognize them under this act, but it is absolutely up to the head of a department as to whether he wants to recognize a man in prosecuting a claim against the Government.

Another peculiar thing that occurred was that men were given six months instruction in the Internal Revenue Bureau, and from what I have been told—I do not know whether it is true or not—after six months they were allowed to leave the department and go out and tell people how to make up their returns. As long as the efforts of these men were confined simply to telling people how to make up their returns, thus making it easy for a business man to get his returns up in accurate and proper form it was all right; but it has extended to the point where they ask these men to be allowed to go back over their returns and see if they can not find some way of making a claim against the Government. Now, if that claim is legitimate, it is all right and I do not find any particular objection to it; but if a man says, "I can show you some way by which you can evade paying your taxes," that is wrong, and I have heard that that is being done. As a matter of fact, I am connected with a number of businesses, and I hear quite a number of these things as I go along.

Mr. SUMNERS. If it would not interrupt you, I would like to ask you a question right there. When these agents go out and undertake to procure employ-

ment, representing that they are able to point out some way by which a claim can be evaded, does their claim of ability to point this out grow out of some technical defect in the method in which it has been handled, or is there some basis of actual or supposed right?

Mr. EDMONDS. It may be possible that it grows out of two different things; one may be decisions that they know about in the department which have not been utilized in making up the return, or it may be a legitimate error on the part of the person making up the tax return. That may be all true; but if a man walks into a business establishment and says, "If I go back over your taxes and find out there are some refunds coming to you, will you pay me a percentage on those refunds?" I do not think it is a square deal.

Mr. REAVIS. That is, you do not think a corporation that has paid a tax upon which there should be a refund should be permitted to employ counsel expert enough to point it out?

Mr. EDMONDS. Oh, yes; I do. Where there is a legitimate return coming to them, I do not think the Government ought to evade paying it.

Mr. REAVIS. Mr. Edmonds, what is the inspiration of this bill? What evil do you strike at in this bill? In other words, what is the source of it?

Mr. EDMONDS. Frankly, I will say to the gentlemen of the committee that Mr. Mondell called my attention to it, and we talked the matter over about a year ago. I prepared a bill somewhat on the order of this bill, but it was late in the session and I saw that there was no opportunity to pass it, and therefore I put it off until this session. This session Senator Sterling, I think it was, introduced a bill in the Senate which was the first bill which I introduced, 5750. I did not like his bill so well, so I went back to my original bill amending section 190. I think the Attorney General can probably tell you more about the evils of this proposition than I can.

Mr. REAVIS. My question is inspired by a letter I have received and by a personal conversation, where the charge is made that by reason of these gentlemen who have been employed in the departments becoming more or less expert, they are being employed very greatly to the detriment of some other gentlemen who are following the same profession in Washington, and in the interest of their business they are seeking the elimination of this competition. Is there anything of that kind involved in this bill?

Mr. EDMONDS. No. I will answer the gentleman by saying that absolutely I have talked with nobody outside of Government people. The Attorney General and Senator Penrose called my attention to it, and Mr. Mondell has called my attention to it. Outside of that there has been nobody who has asked me to put in this bill, nor has there been anyone approving of this bill, except in a general way and what you have seen in the newspapers.

Mr. REAVIS. Then let me ask you this question: Have you information to the effect that gentlemen who have been employed by the departments, and because of the confidential relationship growing out of their employment, have secured certain information, that after separating themselves from the departments they are using it to the disadvantage of the Government?

Mr. EDMONDS. Will you let the Attorney General answer that question? I think he can answer it better than I can. I want to answer your questions very frankly, and I will say that no business house, no institution, and no lawyer have asked me to introduce this bill. All that I have heard in regard to this bill in the way of opposition to it has been from men who are doing just exactly what the bill seeks to prevent.

Mr. REAVIS. The bill seems to be directed at a specific evil, in that it says that those who have been connected with certain departments shall not be permitted to practice before those departments.

Mr. EDMONDS. Yes.

Mr. REAVIS. Now, that is an evil, and that would not apply to ex-Members of Congress at all, because they have never been associated officially with those departments.

Mr. EDMONDS. I have not included Members of Congress, as I tried to explain to you before, because a Member of Congress is elected to his office.

Mr. REAVIS. And has no confidential relationship with any department.

Mr. EDMONDS. And has no confidential relationship with any department, and has no means of preparing a contract or making it. A Member of Congress does not have anything to do with the executive departments. The departments referred to are the executive departments. There are no claims arising out of the action of Congress except through a bill passed by Congress.

Mr. REAVIS. You expressed a willingness to incorporate Members of Congress and include them among the inhibited persons in this bill, while the bill seems to be directed in principle against some employee of the Government who, by reason of his confidential relations, is in possession of information that might be used against the Government. Now, that evil does not apply to Members of Congress at all.

Mr. EDMONDS. No; I think not. It applies to officers of the departments and would apply up to the Secretaries, in my opinion, but I do not think it would apply to any Member of Congress. I said this: That if your committee desired to include Members of Congress I would not oppose it.

Mr. REAVIS. It would not do you much good to oppose it if they once decided that.

Mr. EDMONDS. No; and I am explaining to you that I can not see how any case could arise out of the action of a Member of Congress as a legislative proposition which could be considered as coming under this bill.

Mr. REAVIS. Then, you would not suggest that Members of Congress or ex-Members of Congress be included in this bill?

Mr. EDMONDS. I am not suggesting it, and I said I would not oppose it.

Mr. MICHENER. But do you not think there is a distinction between a Congressman acting as a legislator here and a Congressman acting, as we oftentimes do, as an errand boy for our district, and do you not think that a Congressman gets information from various departments at times which it would be impossible for an attorney or an outsider to get?

Mr. EDMONDS. Well, that might be true. For instance, I am a member of the Merchant Marine Committee, and suppose the Shipping Board closed a contract with some shipping company to build ships, and under that contract a claim arose; just because I happened to be a member of the Merchant Marine Committee I would know nothing about that contract. We may have appropriated the money through the Committee on Appropriations to make that contract or we may have authorized the building of those ships through the Merchant Marine Committee, and yet at the same time the physical making of that contract has no connection with me as a member of the Merchant Marine Committee. Now, should I leave the House and open a law office in the District here—I am not a lawyer, but suppose I did that—I can not see why or how I could in any way be prevented from prosecuting a claim under that contract.

Mr. MICHENER. What I was getting at is this: A Congressman at times goes before a department and asks for information with reference to a particular claim or a particular matter that is pending there, and the department, treating him in a confidential way, lays its cards on the table, so to speak, and gives him the facts in the case, both sides of it, and I have had them say to me, "Now, you are a part of the Government just as much as I am, and if you think that this thing ought to be handled in this way or that way or would you insist on this or on that, as a matter of justice." In that way you get both sides of the case. Do you think it would be proper for me as a Congressman to go out immediately after I have been defeated or quit Congress and open up a law office here and solicit that claim as a claim to be handled by me?

Mr. EDMONDS. It would not be decent, there is no question about that. It would not be morally decent.

Mr. MICHENER. Do you not think, if there are men who are doing that, it should be prevented?

Mr. EDMONDS. If there are men who are doing that, I think it should be prevented, and if the committee wants to investigate I think there are special laws in regard to Congressmen that you want to look up before you go very far, laws that might cover the case you suggest. However, I am not going to take up much more of your time.

Mr. FOSTER. Are these complaints from the different departments general?

Mr. EDMONDS. The complaints are pretty general. The Attorney General will tell you about that, because they are running into it every day down there.

I am now just going to call your attention to a letter I received from Thomas Cuyler Patterson. Thomas Cuyler Patterson is a retired attorney. He was on the Prinz Adelbert when it was seized by the English. These people were detained at a great deal of inconvenience and cost, and they put in a claim against the British Government for just the costs they were put to through the detention of this German ship at the time the war broke out in 1914. They have been trying to collect this claim through the State Department. It is simply a claim for their absolute costs, with no claim for damages or anything of that kind. They have been unable to get any action, the State Department from time to time stating that the time was not ripe yet to take up this kind

of claim. Mr. Lansing was then Secretary of State. He left and opened the office of Lansing & Woolsey, and Mr. Patterson wrote me the other day, and I have seen the card referred to myself:

"In reply to your letter of the 10th instant asking me to send you 'the card received from one of Lansing's firm, which refers to your' (my) 'claim pending before the Department of State,' I will state that my own claim was but one of some twenty-odd claims filed by me, as attorney in fact, in 1914 and 1915. In my last letter to you I wrote: 'The claims seem strong enough in themselves to induce the firm of Lansing & Woolsey to send its professional card to the claimants, stating that that firm gives 'special attention to claims against foreign Governments.'"

That is part of a letter from Thomas Cuyler Patterson, a retired attorney of note in the city of Philadelphia, in regard to these claims.

Mr. DYER. They do not refer in that card to this specific claim?

Mr. EDMONDS. Not at all, but it seemed rather peculiar that a man who had a claim against the Government——

Mr. DYER (interposing). That may have been a mere coincidence.

Mr. EDMONDS. Oh, yes; very likely it is a coincidence, I think. They happened to know Mr. Patterson in some way or other.

Mr. DYER. I do not think Mr. Lansing would countenance anything of that kind.

Mr. EDMONDS. I do not think he would myself. It was probably done by somebody in the concern who happened to know about these claims, but nevertheless Mr. Patterson got the card; and I want to say that he brought it immediately to my house and showed me the card and asked me what I thought about it, and I said, "You are not going to employ him, are you?" And he said, "No; but I am attorney enough to know that that is just purely a case where I would have to pay a commission for nothing. I am going to leave the matter with you to push along as much as you can," and not being attorney, of course, I do not get any fee; that is simply one of the services we perform for people.

Now, this whole proposition is simply a question of whether the Congress wants to honestly prevent men from using information they get in their offices, after leaving their office, to prosecute claims against the Government. There is nothing else involved. They can take any ordinary case against the Government, any equity case or anything of that sort, and this refers to simple claims against the Government.

Mr. DYER. They would not have much luck anyway, before the Committee on Claims of the House.

Mr. EDMONDS. They would not. When an attorney comes before the committee we are not nearly as friendly as when the man comes himself.

Mr. REAVIS. I notice in your bill that the prohibition extends only to claims in which they have been interested while a member of the department.

Mr. EDMONDS. No; pertaining to or arising under any such department while such person was employed there.

Mr. REAVIS. But the restriction is to the department in which they were associated.

Mr. EDMONDS. Yes; I think that is fair. You will note it says, "either directly or indirectly." It may be possible that that may be interpreted so that the law firm of Mr. McAdoo may not be able to prosecute claims against the Shipping Board on account of the close relationship between the Shipping Board and the Treasury Department. I do not know whether the word "indirectly" would apply in that case or not. I have no doubt Mr. Daugherty can tell you far more than I can about these cases; but in 1872 we passed this act, and since that time we have created commissions which are not covered by that act, and there is no way of carrying that act out and there is no penalty attached to the act, and therefore the act is a dead letter. This act of mine simply brings it up to date and provides a penalty which will absolutely prevent these men from doing what they ought not to do.

Mr. REAVIS. You suggest striking out the date.

Mr. EDMONDS. Yes; that is simply a mistake. I find it does not mean anything.

Mr. REAVIS. I think it means a good deal, as the chairman suggested.

Mr. EDMONDS. It does mean a good deal if you leave it in, but I suggest striking that out, because the act will not mean anything if you do not strike it out.

Mr. WALSH. Does this bill prohibit a former employee of the Government taking lunch with an attorney and casually dropping certain information that

he has in his possession about a certain matter, for which he receives no compensation or anything of that sort?

Mr. EDMONDS. Well, I should say so, because it says "directly or indirectly." I want to state to you that in the course of my time as chairman of the Claims Committee and as a member of the Claims Committee I have made up my mind to this fact: There are men in the departments to-day, and always have been so, that, should we establish a precedent in the Claims Committee one day, within 48 hours afterwards every claim that could possibly be brought under that precedent established by Congress would be in the hands of certain attorneys in town here, and they would be sending out letters to persons stating, "You have a claim against the United States Government." I have seen them myself. My father got one in reference to a claim for $3,600.

Mr. WALSH. But you have to get a Member to introduce the bill.

Mr. EDMONDS. Yes. These letters state: "You have a claim against the Government, and if you will sign the inclosed document giving us 25 per cent or 40 per cent or 50 per cent of the claim we will collect it for you." The man is ignorant of any claim, and says to himself, "I do not know of any claim I have against the Government. I might as well take my half and let this fellow get half." He then signs it. It is a power of attorney to collect, you know, and it may be 40 years afterwards that the claims are paid; but the attorney holds that power of attorney, and goes down to the Treasurer's office and collects that claim when it is paid. That was very evident in reference to these southern mail claims that we passed in 1915. You will remember that we passed a general bill paying those southern mail claims.

Mr. REAVIS. These ambulance chasers are not confined to former employees of the Government, are they?

Mr. EDMONDS. Not always; no; and I was just stating that as a side issue, that there are clerks in the departments here who are getting money from attorneys' offices for supplying information to them right to-day, and if we passed a precedent for claims they would have the names of the claims under that precedent in 48 hours.

Mr. SUMNERS. If those gentlemen who have been connected with the Government have their confidential men in the departments to give them information, what practical good do you consider would arise from the enactment of this bill?

Mr. EDMONDS. It would not help that at all. I simply called attention to the fact that I have noticed that when these men leave the departments they no doubt go with an attorney.

Mr. SUMNERS. Is it not better, then, to continue them in the departments rather than have them collect the information?

Mr. EDMONDS. That is what they are doing now.

Mr. SUMNERS. What I am trying to get at is this: If this custom obtains of having men in the departments secretly acquiring this information and passing it out to lawyers, would you by the enactment of this bill be able to prevent that confidential information being taken advantage of in the prosecution of claims against the Government?

Mr. EDMONDS. Oh, no.

Mr. SUMNERS. If you do not prevent it, what is the benefit that comes from the enactment of this legislation? I am asking these questions for information.

Mr. EDMONDS. The benefit is to prevent a man from going into the department or into a commission and then while in there have a hand in originating contracts containing a number of terms and provisions, and then going out of office, and after he goes out of office going right into the legal business and prosecuting claims originating under the same contracts that he wrote.

Mr. SUMNERS. But if some man is left in the department in his stead who can acquire this information and pass it out, would not the Government be hurt just as much by the information going from the inside out all the time as it would be hurt by the information that the man carries out with him?

Mr. EDMONDS. Mr. Sumners, the man who does that, evidently, on the face of things, is dishonest, and you can not prevent a dishonest man from doing a dishonest act. No law that you can pass will prevent him from doing that very thing.

Mr. SUMNERS. My questions were simply for the purpose of getting information.

Mr. EDMONDS. Yes; I appreciate that. I did not introduce this bill with the hope that it was going to be able to cure that sort of situation, because there

is nothing in this act that would cure that, and I do not see how you can cure dishonesty by any legislation.

If there are no further questions, I will now give way to the Attorney General.

STATEMENT OF HON. HARRY M. DAUGHERTY, THE ATTORNEY GENERAL.

Mr. DAUGHERTY. Mr. Chairman, I am summoned here by your committee to answer any questions that the committee may see fit to put to me in regard to the merits of this bill. I had nothing to do with originating this legislation. I do not think anybody in the Department of Justice had. It was called to my attention, in a general way, before the inquiry reached the department for the opinion of the department as to the advisability of the legislation. I promptly gave the committee an opinion which seems to have been misplaced. I remember very well going over the opinion and signing the letter. I recommend the passage of this bill. I am in favor of the bill.

In considering the merits of the bill I had no persons in mind to whom the effect of this bill was intended to be directed. As a general proposition, a man in the employ of the Government, necessarily, if he is diligent and intelligent, has an opportunity to acquire much valuable and confidential information while serving his client or his employer; sometimes of a delicate character, often not obtainable elsewhere, very frequently most essential to the merits of the defense or the prosecution of the Government's interests.

I do not think it is a good picture or a good example to afford an opportunity for an employee of the Government to discontinue his services to the Government, or, speaking as a lawyer, in regard to the profession, while acquiring information which is of a confidential character, in the interest of his client, to become interested, to become the advocate, or to oppose a claim which he had an opportunity to investigate the merits of, and leave the employ of the client or the Government, as the case might be, and use that information to the disadvantage of his client or the Government, and to his own advantage.

I am not willing to say to the committee or to the public that cases of this character are more frequent or more aggravated at this time, since I became connected with the Government, than they have been formerly. Of course, at this time, in the reorganization of the affairs of the Government, and especially in connection with the great number and the vast amount of claims, opportunity is afforded for a greater number of employments of this character and more profitable employment probably than heretofore. I suppose there are pending in the Department of Justice and now under consideration claims, the number of which I would not even guess at, but in the aggregate amounting to over $1,000,000,000.

I have had in the department employees suggest that they have been importuned for information, and as far as the Department of Justice is concerned—and I suppose that is the only department you expect me to speak in reference to—I would feel that in the reorganization which is expected and which it necessary there would be greater security, and it is quite advisable that employees who will hold over necessarily, as they are employees, young and old, who have been there some time, should be relieved from the temptation, if there is a temptation, and I think there may be, to give information. I think they should be relieved of that temptation and embarrassment. I think it will be conducive to the morale of the Department of Justice to pass this bill.

Mr. DYER. Mr. Attorney General, would you object to stating what your views are with reference to the amendment which has been suggested to include Members of Congress?

Mr. DAUGHERTY. I would not object at all. Members of Congress are not in a position to acquire the information. They are not in a position to have the confidential information connected with these claims. They are in the employ of the Government in a different capacity. No Member of Congress, since I have been Attorney General, has made any improper inquiry as to the stage or state or the particular merits of any claim pending before the Department of Justice.

I was speaking then with regard to claims. There is certain other information which the Department of Justice secures at considerable expense to the Government in connection with other matters that Members of Congress have made inquiries for. Whether I have done so properly or improperly, without exception I have refused to furnish such information. Members of Congress

are in a different position. You gentlemen know and the public knows that with so many claims before the departments and with a change of administration, which very naturally was expected and which is very legitimately being carried out, I think, that there is a rather acute situation in this regard. If I were a Member of Congress, without any intention of making a drive at anybody and regardless of who now is in control of the administration and who had retired, with the information I have acquired since I have been here, and with the information I had before I came here, I certainly would support this measure.

Mr. REAVIS. Mr. Attorney General, without asking you to specify any particular cases, have matters been brought to your attention concerning the activity of former employees of the Government departments that impress you with the necessity for legislation of this kind?

Mr. DAUGHERTY. That is what prompts my advocacy of the measure.

Mr. REAVIS. You stated as a matter of principle that an attorney representing both sides of a case was unethical and wrong, and we all agree with that, and you stated that for that reason you thought the measure was advisable. I wanted to inquire something as to the necessity for it, whether there was a positive evil that this bill would tend to correct.

Mr. DAUGHERTY. I think this legislation ought to be on the statute books under any circumstances.

Mr. REAVIS. On general principles?

Mr. DAUGHERTY. On general principles, and whether the Government is in this present situation or whether it is in a normal condition. Of course, you appreciate the fact that the Government does not pay very flattering compensation, and men accept these positions and look upon employment by the Government in any capacity as being attended with great honor. When the honor has worn off, if it wears off, there is a great temptation, and there are many opportunities for men to be employed who have had the training and who have been in a position to have the confidential information—to go outside and be employed at much higher compensation than the Government gives.

I have several men in the Department of Justice who have been offered within the last month, largely because of having been associated with the Department of Justice since I have been there, many times more compensation than they are receiving at the department to accept private employment. I do not think as yet anybody who has been employed by the Government since I have been in charge of the Department of Justice has left the Department of Justice on account of such offers. It is perfectly legitimate for men interested in their own affairs to want the services of men who have had facilities for becoming acquainted with the manner in which business is done in the Department of Justice, or any other department. In order to have their claims and matters of business expedited. Especially a department which has employed a great number of employees who have been associated with men who have left the department there is a disposition at times to expect favors by way of expediting business at least, which I do not think ought to be afforded; and while no complaint has been made to me by attorneys or persons who have not been connected with the Government because of some advantage they might think somebody has who has been employed by the Government, yet I think that the profession, if they are lawyers, or the agents, if they are not lawyers, who may be employed by these concerns ought to have the same chance as anybody else to have their business taken care of regardless of what their connection has been with the Government or what their peculiar information is.

Mr. REAVIS. Mr. Attorney General, my question was directed because of the position that I hold with reference to this bill. We will all confess, of course, that these employees are underpaid. By reason of his employment he may become peculiarly equipped to handle claims against the Government that arise from that department. Now, from my standpoint, I do not see anything wrong, if that employee severs his relation with the Government, about employing his special mental attainments to his own advantage, provided it does not touch some claim with which he was familiar and provided it does not call for the use of confidential information that came to him because of his relationship with the Government. That seems to be the theory of this legislation. What I want to know is whether you have had called to your attention any former employees of the Government representing individual interests against the Government that calls for a bill of this character.

Mr. DAUGHERTY. I have seen evidences in the department, in a great many cases where I thought the person employed, having had the facilities for getting the confidential information, was employed on that account, and that

their services indicated they were taking advantage of that confidential information.

Mr. REAVIS. Of course, that would make the legislation necessary.

Mr. DAUGHERTY. I am not desirous of reflecting on anybody, and I want it very distinctly understood that there is no political drive in this matter, or any such object on my part or on the part of anybody connected with the Department of Justice. I think that when you consider the situation you will agree that there is no opposition that could be legitimately pressed against this measure. As to the form of it, it seems to be satisfactory, and this should be the general policy of the Government at any time, and had my opinion been asked a year ago or had my attention been attracted to it I would have been of the opinion that this legislation was quite proper, and under the circumstances, without reflecting on anybody, I think it is quite timely now.

Mr. MICHENER. Mr. Attorney General, you recommend the passage of this legislation, as I take it.

Mr. DAUGHERTY. I did, and I thought there had been given to the committee my written recommendations, but the chairman of the committee advises me that it is not here. I also knew that Mr. Goff had been before this committee.

Mr. EDMONDS. I think this is a copy of it, Mr. Attorney General.

Mr. DAUGHERTY. No; this is not my opinion.

Mr. MICHENER. The point I was getting at is this: You recommend this particular legislation and you state you do not object to including former Members of Congress. Do you recommend including in this legislation former Members of Congress?

Mr. DAUGHERTY. That is purely a matter for the committee to determine. If I were a Member of Congress, I would not include them in this bill.

Mr. MICHENER. That is what I wanted to get at.

Mr. DAUGHERTY. They are not in the same position as those whom this legislation is now directed against. I do not think, in any claim before the Department of Justice, any Member of Congress would expect me or any of my subordinates to sit down with him as a Member of Congress and discuss the details and the testimony in connection with a claim which the department was handling in the interest of the Government, because they would not be employed in the case, and I do not think I would include them in this measure at this time.

Mr. MICHENER. No; but you appreciate, do you not, Mr. Attorney General, that in cases in which your department is represented and cases arising before your department are not the same kind of cases as those which arise with regard to tax cases and cases before the Court of Claims and claims of various natures?

A Member of Congress receives different information with reference to a pending claim from what he does in reference to a pending lawsuit.

Mr. DAUGHERTY. Yes; but, Mr. Michener, a Member of Congress has the right to have certain facilities for getting certain information in connection with his duties as a Member of Congress.

Mr. WALSH. Let me ask you a question right there.

Mr. DAUGHERTY. Pardon me for just a minute, if you please.

Mr. WALSH. Certainly.

Mr. DAUGHERTY. And a Member of Congress is not very likely to use that information to the disadvantage of the Government.

Mr. MICHENER. I think that is true. But I will say frankly that I was in favor of preventing Members of Congress, either after they were defeated or had voluntarily withdrawn from Congress, remaining in Washington and practicing before these various departments for a limited time as attorneys, the very departments before which they had been going day after day and week after week in the capacity of Congressmen and using information, I may say, which they had acquired on these claims.

Mr. DYER. Do you think, Mr. Michener, that a Congressman gets any information from the departments that would benefit them in the practice of law?

Mr. MICHENER. Yes, sir; I do.

Mr. DAUGHERTY. Not only that, Mr. Dyer, but a Congressman gets information that is not open to the public.

Mr. WALSH. That is not given to the public, but is given to him to communicate to his constituents.

Mr. MICHENER. Well, not always. I think that Congressmen can get certain information with regard to certain cases that individuals or an attorney could not get. I think every Member here knows that.

Mr. DYER. I would like to know whether in your opinion the prohibition against officers, clerks, or employees in any department, court or commission, board or bureau of the United States Government to act as counsel, attorney, or agent for or in relation to any claim against the United States pertaining to or arising under such department, court, commission, board, or bureau of the United States in which such person was employed would include Congressmen or Cabinet officers?

The reason I ask the question is that I think that it is conceivable that a man of the Cabinet—I am not speaking of any particular case—might obtain such information, such expert information, if there is such a word, that he would have a great advantage in appearing before some department over which he had been presiding or with which he had been connected. I think it is conceivable that a man in any Cabinet or in any official position might acquire such information that it would be unfair to have him appear before any department within a certain period.

This bill limits that period to a certain time.

Mr. DAUGHERTY. I know, and I believe that a certain time should be set, and that it should be confined in the bill to those persons.

Personally, of course, I can only speak for one member of the Cabinet. I know one member of the Cabinet who is not going to practice law here if he stays here a long or a short time.

Mr. DYER. Do you think that it is all right, Mr. Attorney General, for a man employed, say, in the Shipping Board, to get information with reference to one of the great many hundreds of claims pending there, to be employed by a client at the end of three years to go in and prosecute that claim?

Mr. DAUGHERTY. I really do not think that it would be, as a matter of fact.

Mr. DYER. But this says that it is all right after three years.

Mr. DAUGHERTY. I do not think that it is ever good professional morals for a man ever to take employment in a case against a man who has been his client.

Mr. DYER. The original statute limited it to two years. This bill extends it to three years. Do you think that is right in principle if that occurred after three years?

Mr. DAUGHERTY. I do not think that it is a matter of time.

Mr. DYER. The reason for putting it that way is that any appropriation that might be made during the time that that man was in the department would be wiped out in that time?

Mr. WALSH. Yes; the appropriation would be wiped out in that time.

Mr. DAUGHERTY. If you are asking me for my opinion, I do not think that it is a matter of time. Now, as a matter of fact, a very great number of these cases have been running along for a longer time than three years, and in addition to that there are many auxiliary or collateral claims and conditions growing out of these claims that will run along until all of the present Members of Congress have gone to their reward unless the Department of Justice is more expeditious than I think it is going to be.

Mr. WALSH. What is to prevent a former employee becoming a member of a firm or a corporation that had the claim?

Mr. DAUGHERTY. Well, as a general thing, men who ought to practice law, whether this legislation is on the statute books or not, would not appear before the department themselves if they were interested in such a firm.

You can not, by legislation of this kind, prevent a man from being dishonest if he wants to be dishonest. You can not by any legislation prevent a man from being dishonest if he wants to be, but if he had any pride in his profession or in the public estimate, this bill with any reputable attorney, or any reputable person, would go far to prevent his doing the thing secretly that the bill prevented him from doing openly, and that is about as far as you can go.

Mr. FOSTER. May I ask if it would prevent members of the Cabinet from practicing before the department?

Mr. DAUGHERTY. I do not think that it would have any effect upon me, speaking for one member of the Cabinet, if I have any service in me after I get through here, as I will not start a law practice here.

This bill—I had not read it carefully—but it is the opinion of the Attorney General that it includes members of the Cabinet as well as anybody else, so far as that is concerned.

The CHAIRMAN. Would not this bill—the language in line 10—prevent the Attorney General from employing a man that might drop out of the depart-

ment to defend one of those claims, where it states "in relation to any claim against the United States Government"?

Mr. DAUGHERTY. I do not advise the bill to so provide.

The CHAIRMAN. I think that it could be so construed.

Mr. DAUGHERTY. I think that is a very good construction, and that it could be so construed. I have found in the interest of the Government that it is qu te advisable where men have left the department, because of the peculiar information they had and the study that they had made of the case, to employ them to continue those cases. And that ought to be permitted, because you can understand that I am quite aware that there have been a great many very efficient and competent employees of the Department of Justice before its present organization, many very conscientious men, and many of them have been at work on the Government's business and on some of these cases for quite a while, and it would be to the advantage of the Government to permit the Department of Justice, where the Attorney General is of the opinion that it is to the interest of the Government, to employ these men who have left in certain instances, or who may have left the department with the very legitimate purpose of establishing a business of their own, or with the very legitimate reason that in the evolution of affairs their services are discontinued.

Mr. YATES. If you employed a man in your department, he would not be prosecuting a claim against the Government, but he would be defending a claim for the Government.

Mr. DAUGHERTY. Yes; he would be defending a claim for the Government.

The CHAIRMAN. This is not against but in relation to any claim against the United States.

Mr. DAUGHERTY. That is "in relation" to any claim. Unless there is some other phraseology employed there that would not compel the interpretation of the words "in relation to any claim" as used in line 9 to mean that he could not be employed by the Government.

Mr. DYER. That prohibits anybody from employing h'm.

Mr. DAUGHERTY. That would make it impossible to employ anybody to continue to represent the Government in any claim that was under consideration by the Government when he was employed. whether you wanted to retain him for the Government or not.

I hope that you will study that and see that that is corrected, if that is the proper construction of the bill.

Mr. WALSH. Does this include officers of the Army and the Navy—this language?

Mr. DAUGHERTY. I think so.

Mr. WALSH. I think there is some doubt about that.

Mr. DAUGHERTY. Well, I do not think so. Why would there be any doubt about it?

Mr. WALSH. It states "as an officer, clerk, or employee in any department, court, commission, board, or bureau of the United States."

Mr. DAUGHERTY. Are not the War Department and the Navy Department departments of the United States?

Mr. WALSH. The Department of War and the Department of the Navy are, but is an Army officer or a Navy officer an officer of one of those departments?

Mr. DAUGHERTY. The Army officers are officers of the War Department and the naval officers are officers of the Navy Department, unquestionably, and I do not think that there could be any doubt about it.

Mr. WALSH. They are given a commission by the President.

Mr. DAUGHERTY. So am I.

Mr. WALSH. Yes; but they are not commissioned as officers of the War Department. They are commissioned as officers of the Army or officers of the Navy.

Mr. DAUGHERTY. I do no think there could be much doubt about that.

The CHAIRMAN. How about this proposition, Mr. Attorney General, where a person has been employed on the claims or has knowledge of a claim while in the department, why should he not be permanently debarred from appearing against the Government in connection with that claim while those other claims in which he has not been directly interested, but which he may have some knowledge because of the general class of business done in the department, the limitation might be less, it seems to me, than making it two or three years.

It seems to me that a person that has obtained knowledge of a particular claim as a result of his employment in the Government ought always to be barred.

Mr. DAUGHERTY. From any claim?

The CHAIRMAN. No; from that claim.

Mr. DAUGHERTY. From that claim. I think that would be all right. I do not think that because a man who had made the sacrifice, if it is a sacrifice, to render a service to the Government, ought to be forever debarred or excluded from exercising his rights and enjoying his privileges as a lawyer or as a c tizen because he had been connected with the Government, but any employment that pertains to any claim in the department while he was there should be prohibited.

The CHAIRMAN. And you would not suggest that with regard to the cla'm with which he had no special familiarity?

Mr. DAUGHERTY. I do not think it is a matter of time.

The CHAIRMAN. The thought occurs to me that it should apply as to claims as to personal knowledge growing out of his relation to the service.

Mr. DAUGHERTY. Or as to claims with which he may not have had any personal knowledge.

You can not prove that in many cases. In many instances in the Department of Justice there are cases which are not known generally to everybody in the department. There might be in one branch of the Department of Justice many claims that the employees or officers of another particular branch of the Government or department might not know anything about the facts in regard to them, but they have the facilities.

I think that it ought to apply to any claim at any time regardless of time.

Mr. REAVIS. Mr. Attorney General, let me ask you: Would you consider it either advisable or necessary that an employee of the Government be proh bited from prosecuting a claim that arose or was considered in the department at a time when he was not connected with it?

Mr. DAUGHERTY. No; I would not.

Mr. REAVIS. Well, does not this bill do that?

Mr. DAUGHERTY. No; I do not think it does.

Mr. REAVIS. Does it not prohibit him from ever appearing before that department on any claim without reference as to whether or not that claim originated or was in the department during his service?

Mr. DAUGHERTY. It would prohibit him from appearing in any claim in the department at any time within three years next after he shall have ceased to be such officer, clerk, or employee, would it not?

Mr. REAVIS. Yes. Well, a claim may have originated within three years after he left, and it might not have been in the department at a time when he had any connection with the department, or at a time during which he was concerned with the department, and he had no information, confidential or otherwise, with regard to that claim. Should he be prohibited from prosecuting a claim of that kind? Do you not think that a restriction, or that we ought to make the prohibition apply only to those matters that were in the department in some form or another during his service?

Mr. DYER. Is it not going further than that. Mr. Reavis, and limiting it to things with which he had nothing to do?

Mr. DAUGHERTY. No, I do not think so.

Mr. DYER. Well, if he were in the department and had no special information with regard to the matter——

Mr. DAUGHERTY (interposing). Well, you would have to go into his mental operations. He might have a source of information, even though he were not directly connected with the case.

Mr. DYER. But he might be in a different bureau entirely.

Mr. DAUGHERTY. Certainly. We have a very large number of claims coming from other departments to the Department of Justice and often they are a long time coming.

An employee of the Department of Justice has certain facilities, I think, considering his acquaintances, of knowing when these claims or where these claims originate, something about what is involved, the progress that is made in the department where they originate, or before they originate in the department, and it is possible for a claim to be constructively in the department and under consideration when it is only on its way.

Mr. REAVIS. But suppose, Mr. Attorney General, that your suggestion be acted on to the effect that time is of no consequence and the three years

limitation be stricken from the bill, then, employees of the department would be forever prohibited from prosecuting any claim in that department under this bill, would they not?

Mr. DAUGHERTY. Well, I do not think that that is in the bill.

Mr. REAVIS. Well, would you advise that that be done?

Mr. DAUGHERTY. I do not think that the legislation ought to be directed against persons who have left the department and that there should be made a permanent inhibition regardless of the merits of the claim to prevent men from legitimately pursuing their professions and their vocations; but this is within three years.

You see, there is a phase of this matter that I do not know whether you are impressed with or not. In three years a great many changes take place. You are aware of the fact that probably—I have in mind a situation where the acquaintance with the employees of the department facilitates their getting information shortly, or shortly after a person has left the department, having had cordial relations with the employees and the employees being under obligation to them. I would like, for the discipline of the department, some legislation that would prohibit the use of that information, which was gained while they were officially connected with the department.

Mr. REAVIS. I am entirely in accord with that; but what do you say, Mr. Attorney General, to an amendment to this bill that would prohibit an ex-employee of the Government from appearing against the Government in any claim that was either actively or constructively in the department with which he was connected during the time of his service?

Mr. DAUGHERTY. Well, if you correct that, that is the principal thing that we desire.

Mr. REAVIS. That is sufficient, if we do that?

Mr. DAUGHERTY. That is the principal thing that we are trying to correct and that we are directing this legislation to correct. There is one thing which we are desirous of correcting, and that is what I am talking about, and that is an opportunity to more or less demoralize a department by using employees—I do not say that anybody has—but I say that if there is an opportunity afforded to do it that it is not wholesome.

Mr. REAVIS. Oh, I agree with you there, Mr. Attorney General. Suppose that we pass a bill the construction of which would be tantamount to a perpetual prohibition, might that not have some effect in the Attorney General getting into the department the type of men that he would be glad to have there?

Mr. DAUGHERTY. Well, that would probably have some effect, but I do not believe that you ought to consider that. You might get into a legal question on that question of permanently penalizing a man from the performance of his reasonable, legitimate duties or pursuing his avocation because he had at one time been in the employ of the Government.

Mr. REAVIS. Well, as I read the bill—I may be wrong in the construction—if you eliminate the three-year clause as it is there you would be perpetually prohibiting any employee of the Department of Justice from ever prosecuting any claim that was in the department.

Mr. WALSH. While he was there.

Mr. REAVIS. Whether he was there or not.

Mr. WALSH. Only while he was there.

Mr. REAVIS. Where do you get that, Mr. Walsh?

Mr. DAUGHERTY. "Pertaining to or arising under any such department, court, commission, board, or bureau of the United States in which such person was employed, or with which he was officially connected, or in any manner, or by any means to aid in the prosecution of or otherwise render service directly or indirectly with respect to such claim within three years next after he shall have ceased to be such officer, clerk, or employee."

Now, that fixes the time within which he can act as an attorney.

Mr. REAVIS. Yes, sir.

Mr. DAUGHERTY. Or an agent.

Mr. REAVIS. Yes, sir.

Mr. DAUGHERTY. After his services have been discontinued; but it does not fix the time or the character of claims, where they are described, or that the claims are necessarily in existence at the time that he was connected with or was an employee of the Government.

Mr. REAVIS. The language of the bill as stated on line 9 and the prohibition is in relation to any claim against the United States that was in the department

with which he was connected, not during the time of his connection, but at any time.

Now, you strike out the 3-year limitation and every man that accepts an appointment from you in the Department of Justice will have to realize that he is accepting employment that perpetually prohibits him from ever prosecuting a claim against the Government that may arise at any time in the Department of Justice.

Mr. DAUGHERTY. At any time thereafter.

Mr. REAVIS. I do not think necessarily thereafter.

Mr. DAUGHERTY. I think from hastily considering your proposition that it would preclude him—I do not want to go to the mat on the matter, but I think I would—it would preclude him from being employed in relation to any claim before the department, regardless of where, when, or how the claim originated or got there.

Mr. REAVIS. Now, do you think that that is wise, Mr. Attorney General?

Mr DAUGHERTY. I think that you might correct that by inserting certain language in line 10, so as to cause that to read "with regard to any claims pending or—— "

Mr. REAVIS (interposing). Whether actually or constructively in the department during the time of his service?

Mr. DAUGHERTY. "Under consideration of the department or in the department during the period of his service or for three years thereafter."

Now, the object of this "three years thereafter" in connection with this particular matter you are now discussing is this: There are many claims before these departments that, after they are there, are divided up and auxiliary or collateral claims grow out of them, all originating from the parent claim.

Mr. REAVIS. I think that the language would cover that if it says "directly or indirectly."

Mr. DAUGHERTY. I do not think that it is fair to penalize a man, and I do not see any particular reason, and I do not think it is fair to penalize a man forever because he happened to have been, fortunately or unfortunately, in the Government's employ.

Mr. REAVIS. Well, now, you might want the services of some high-class, efficient lawyer.

Mr. DAUGHERTY. I have often felt the necessity of one.

Mr. REAVIS. Yes; but you might be unable to get the very type of man that you wanted, if he is to be forever prohibited from appearing against the department with reference to any claim ever coming up before your department.

Mr. DAUGHERTY. Yes; it would have some effect. I do not have any doubt but that there are a great many men—and it may be all right—I do not have any doubt but that there are a great many men who are serving the Government now, who hope by their experience and the training that they have, and possibly because of their opportunity due to their employment there are now, and always have been, and may always be willing to accept employment for the Government. It does afford an opportunity if a man renders a good service to the Government, it affords an opportunity to secure private employment at better compensation than the Government pays.

The CHAIRMAN. Is it not true that the old law which provided that the claims must be pending in the department rendered that law nugatory, because a great many claims that would not be claims and were not pending at all, but they had information of the fact that a claim might be presented, and that was one of the troubles that was offered that after these people left the department they would then go out and get a lot of claims and present them against the Government; get people to present claims.

Mr. TILLMAN. But if you say that they are actively or constructively pending in any department——

The CHAIRMAN. They would not be constructively pending, if somebody went out and found that they could get some money out of the Government in some way by asking somebody to put in a claim against the Government and do some particular thing in which they were interested.

Now, take, for instance, the tax claims. Of course, this would not prevent persons from advising in regard to making tax returns, as I understand it. But suppose there was a possible claim for refund. There is not any claim pending at the time the person leaves, but he goes to the person who may be entitled to a refund and advises him of the fact at he can get some refund, and thereupon files a claim. Now, that claim was not in the department at the time he resigned.

Is that one of the sort of claims that ought to be prevented?

Mr. WISE. May I ask a quest on? If a Government employee collects the tax from a taxpayer that is not just, is it not the duty of the Government to see that the taxpayer receives his money back?

The CHAIRMAN. I am not urging an unjust payment of taxes, but I am suggesting that as something that has been urged.

Mr. WISE. It strikes me that if the Government in any case, or at any time has collected taxes which are not due, that the officials of the Government represent not only what we call the Government but the people, and that they ought to see that the people get justice.

The CHAIRMAN. Of course I think that we are all aware of the fact that there are always an abundance of claims laying around here.

Mr. EDMONDS. Mr. Chairman, there is one thing that I would like to call attention to in connection with this bill, and that is that some exception should be made to the men who have left the Patent Office and who are prosecuting patent claims before the Patent Office.

Now, the Patent Office is a rather peculiar institution. It is the only one of its kind in the country, and probably the only place where expert patent lawyers can graduate from; and therefore men who have left the Patent Office and who are opening offices for the purpose of taking up claims for patents should not be prohibited from appearing before that office.

The CHAIRMAN. Probably that is not a claim against the Government.

Mr. EDMONDS. It would not be a claim in a financial sense, and yet it would be a patent case, and a claim might arise against the Government in connection with it. I should not want this bill to cover that.

The CHAIRMAN. Are there any further questions to be asked this morning? If not the committee will stand adjourned to meet to-morrow morning at 10.30 o'clock a. m.

(Whereupon, at 12.01 o'clock p. m., the committee adjourned to meet at 10.30 o'clock a. m. the following morning.)

COMMITTEE ON THE JUDICIARY,
HOUSE OF REPRESENTATIVES,
Thursday, August 11, 1921.

The committee met at 10.30 o'clock a. m., Hon. Andrew J. Volstead (chairman) presiding.

STATEMENT OF HON. THETUS W. SIMS, WASHINGTON, D. C.

The CHAIRMAN. Mr. Sims, do you wish to be heard?

Mr. SIMS. Mr. Chairman, I would like to make a statement. I have not come here to oppose the objects or purposes of the bill that you are considering. I have not come for that purpose at all, nor have I come here especially to advocate it, because Members of the House do not need anything of that sort. If I understand this bill, Mr. Chairman, it is very far-reaching, but I am not criticizing it because of that, because I think it should reach as far as the reason for the legislation requires. I think that every Cabinet officer or ex-Cabinet officer will be subject to the provisions of this bill. I think that every ex-Federal official of any kind or character connected with any department of the Government will be subject to the provisions of the bill.

The CHAIRMAN. Do you mean to say that they are or that they ought to be?

Mr. SIMS. I said that they are subject to it. It will apply to all of the executive officers of the Government. For instance, this bill will apply to the Attorney General of the United States after he is out of office. He will be prohibited from taking any of the practice that is prohibited or covered by the bill. It will cover also every ex-district attorney in the United States, not only here in Washington but everywhere else in the United States. It will cover every assistant district attorney in the United States, and, as I have said, it will cover every official of every executive department of the Government, not only the highest but the lowest, and not only here in Washington but wherever they may be. It will cover every man who has become expert upon or who has acquired any special knowledge of the income-tax law, prohibition law, or any other law of the United States, and it will prohibit such persons from engaging in such practice anywhere in the United States. It will apply to every rural carrier, every city letter carrier, every post-office inspector, every internal-revenue collector, every agent connected with the Internal Revenue Service wherever located. I think, Mr. Chairman, that the bill ought to be just that broad if necessary. Now, there is one phase of the subject that I desire to broach, and that is the only thing I am here to discuss.

Mr. FOSTER. Would it prohibit a former Attorney General from appearing in the Supreme Court of the United States?

Mr. SIMS. As against the United States?

Mr. FOSTER. Yes, sir.

Mr. SIMS. It says in any court. Why does not that cover all courts?

Mr. FOSTER. It would apply to any district attorney in the United States?

Mr. SIMS. Yes, sir; to any district attorney or assistant district attorney. It would apply to any marshal or any officer of any kind in the service of the United States Government. I am not complaining on that account. In other words, I say you should in this legislation go to full limit in accomplishing the purposes that are intended. I know how embarrassing it was to the Attorney General in his statement here to advocate making this bill apply to ex-Members of Congress or ex-Senators and Representatives. While they do not know or do all that the executive officers know and do, or in just the same way, I think it should apply to them. In other words, ex-Congressmen would not know in the consideration of a case before the Internal Revenue Bureau what particular individuals are liable to additional assessments, or what individuals may be entitled to a refund, or anything of that sort.

Mr. REAVIS. This bill, as I understand it, prevents any employee of the Government, or ex-officer or employee of the Government, from appearing in a case antagonistic to the Government that arises within the department with which he was connected—is that true?

Mr. SIMS. I think that is a clear inference from the bill.

Mr. REAVIS. That is what the bill says, is it not?

Mr. SIMS. Yes.

Mr. REAVIS. The ex-Member of Congress has been connected with no department.

Mr. SIMS. That is true.

Mr. REAVIS. Therefore you would have to make a sweeping provision providing that he could not represent any clients with interests antagonistic to the Government in cases arising within any department.

Mr. SIMS. I would suggest an amendment to the bill that would make it unlawful for ex-Members of Congress, Senators and Representatives, to take any kind of a case before any court or department wherein the United States would be necessarily a defendant.

Mr. REAVIS. In other words, you would penalize the man who has been a Member of Congress to the extent of absolutely denying him the right or privilege of being employed as counsel in any case against the Government?

Mr. SIMS. Yes.

Mr. REAVIS. You would take from him the opportunity of engaging in Federal practice simply because he had been a Member of Congress?

Mr. SIMS. Your bill limits it.

Mr. REAVIS. There is nothing in the bill about that.

Mr. SIMS. Yes; the limitation is three years in the bill.

Mr. REAVIS. Would you not be depriving a great many able men of a very legitimate means of livelihood by such a provision?

Mr. SIMS. I do not think that any man ever sought service in the House or Senate with the idea or hope of getting anything out of it except the honor attached to such service and the opportunity to serve as a member of the national legislative body. That is the motive and incentive to such service, and it is not rendered with a view to increasng the amount of their income from the practice of law after they cease to be Members, involving the Government. Consequently he can not complain about being deprived of income. Then, if you have a law of the kind suggested, every man elected to Congress from that time on would know what he was doing, and what he might expect.

Mr. REAVIS. If you will pardon me for interrupting you, I would like to ask you this: If you have a law of that kind, so that every man would be charged with notice, then is it not true that you will probably get a low grade or class of lawyers in Congress before you are through with it?

Mr. CHANDLER. Is it your understanding that the only incentive to service in Congress is the honor attached to such service or the opportunity to serve?

Mr. SIMS. It is because of the honor and the opportunity to serve. It is because of the honor of being engaged in high legislative service. I do not see any other object that he could have, and he certainly should not have any undisclosed and selfish purpose.

Mr. REAVIS. There would be no financial inducement.

Mr. SIMS. Not during these times of war prices. Let me call your attention to what I think this thing would lead to, possibly. Mr. Edmonds, who introduced this bill, is the chairman of the Committee on Claims. I was a member of the Committee on War Claims for 14 years, and for more than half of that time I was the ranking member. That was during the time when the Republicans were in charge of the House, and when the Democrats came in I was made chairman of that committee. I suppose I had every opportunity that would come to a member of a committee of that sort to know something about those things with which the committee dealt.

Oftentimes claims came before the committee that were in the nature of class claims. There were cases where a claim would be acted upon by sending it to the Court of Claims for adjudication, and when the Court of Claims passed on it that might cover a large class of claims, involving millions of dollars, because the Government would settle the rest of them falling within the same class upon the same basis without further legislation or litigation. For instance, there was a bill introduced in Congress to return the cotton taxes collected during the Civil War. I think they amounted to $2.50 per bale, and a bill was introduced to return those taxes to the persons who paid them, upon the theory that the tax was unconstitutional, being a direct tax and was not apportioned. Those tax claims amounted to $67,500,000, and $7,000,000 of it was collected in my own State. I introduced a separate bill for that. Now, suppose that claim had been sent to the Court of Claims, as it might have been necessary to do. Now, suppose those claims were sent to the Court of Claims, and after they had been sent to the court suppose I should resign my office or should retire after my term expired, and suppose I was then employed to represent the very identical people who were the beneficiaries of the legislative action referring the claims to the Court of Claims, and I was to get a large contingent fee——

Mr. REAVIS (interposing). Why do you say they would be the beneficiaries of your legislative action? Congress passed the law, and when Congress passes the law that is prima facie evidence that they are entitled to the relief granted.

Mr. SIMS. Members of different committees handle different things, just as other people handle different things in the particular bureaus in which they serve. Members of committees handling that sort of things would necessarily have more influence or power in procuring legislative action than Members of Congress who were not on these particular committees. Now, such a case goes down there to the Court of Claims, and then the parties who are the beneficiaries of that legislation, because they have claims of that same class, come and offer me a very large contingent fee, after my term of service has expired, to appear before that court. Now, why should I be permitted to be employed in connection with claims of that sort and not my clerk, who, perhaps, has done more of the detail work than anyone else? Why should he be denied that opportunity?

Mr. REAVIS. Why would your clerk be denied the opportunity to represent claims of that character under the provisions of this bill?

Mr. SIMS. Not under this bill; but I am talking about the proposition of including ex-Members of Congress. Now, there is another thing: Why not remove from Congressmen the temptation to do anything of this sort? Now, as you understand, I am not criticizing the purposes of this bill in any way or the scope of it, but I certainly think that it ought to cover Representatives and Senators in Congress, at least for a limited time after they retire from Congress.

Mr. REAVIS. Then, for a certain length of time we should, by legislation, take from them the right and opportunity to represent any case against the Government?

Mr. SIMS. Yes, sir; that should apply to any case against the Government. I merely speak of that as a matter of illustration. Of course, nothing of that sort has occurred that I know of, and I do not know that it will occur, but it could occur.

Mr. HERSEY. You referred to the fact that you were on the Committee on War Claims. Now, unless there should be some understanding between you, as Congressmen, and some one outside, or some big interest, that you would prostitute your influence as a Congressman to promote such private interest in getting some matter of legislation, what would be the benefit derived from your service?

Mr. SIMS. That would be after I got it to the court. That is what I am talking about. I mean after the legislation has been enacted referring the claim to the Court of Claims.

Mr. HERSEY. What would you have discovered in the Committee on Claims that would be of benefit to them?

Mr. FOSTER. It would be information detrimental to the Government, rather.

Mr. SIMS. Your qualifications would be such and your prestige would be such that you would necessarily have an advantage over some lawyer who had not had the same sort of service. Why should we capitalize honorable legislative service for private profit?

Mr. REAVIS. The purpose of this bill, as I understand it, is to prevent a man who has occupied a confidential relationship to the Government, in which he has had the opportunity at least to gain information that otherwise would not come to him after he has severed his connection with the Government, from becoming an attorney on the other side of the proposition, thus utilizing for the benefit of the claimant confidential information that he derived while he was in the employ of the Government. Now, you say that a man who has served on a committee, by reason of that experience acquires special qualifications. Do I understand that you would favor legislation that would prevent a man from doing a perfectly legit mate thing simply because he possesses special qualifications for doing it?

Mr. SIMS. Legitimate things are things that are not prohibited by law. For instance, we do have a statute that makes it a felony for a Member of Congress to practice before the Court of Claims.

Mr. REAVIS. While a Member of Congress.

Mr. SIMS. Yes. Now, why was that statute ever passed? Of course, some Member of Congress was, perhaps, doing that, but I do not know of any instance.

Mr. REAVIS. That is not the reason.

Mr. SIMS. It was done to prevent it or it was done upon the assumption that some Member would do such a thing.

Mr. CHANDLER. You are referring to the act which prohibits Members of Congress from practicing before the Government departments?

Mr. SIMS. No; before the Court of Claims.

Mr. CHANDLER. Is there a statute of that kind specifically mentioning the Court of Claims?

Mr. SIMS. Yes. Why was that? It was because the Court of Claims has jurisdiction only of cases against the Government.

Mr. CHANDLER. Suppose a Congressman brings a suit in a district court or circuit court against the Government?

Mr. SIMS. The statute I am speaking of applies only to the Court of Claims.

Mr. CHANDLER. And to no other court?

Mr. SIMS. As I recall, it applies specifically to the Court of Claims. Now, we make that a felony, and in principle what is the difference? I think that statute was a correct one; I think it was right, and while I am not opposing the bill I do think that when you deny to every officer and employe of the Government, to every district attorney and assistant district attorney the opportunity for three years to represent claims or to represent any case against the United States Government that ex-Members of Congress should be included. I suppose that the district attorney or assistant district attorney could not defend anybody who was indicted for a violation of any Federal law for three long years after leaving the Government service. Now, if you do that, why should you not go the whole length of the reasoning, principle, and purpose of the law and make the same thing apply alike to ex-Representatives and Senators?

Mr. HERSEY. The Attorney General may get inside information with regard to claims against the United States that may be prejudicial to the interest of the United States, and that he could use to the detriment of the United States, but Members of Congress would not be likely to acquire such inside information.

Mr. SIMS. Of course it does not apply fully in every detail.

Mr. HERSEY. Let me ask you this question: After a man retires from Congress, suppose Congress should pass legislation creating a new character of claims against the Government. Would you prohibit him from being an attorney in any claims of that kind?

Mr. SIMS. If they arose within the time of his service, why not?

Mr. HERSEY. Why would you do that?

Mr. SIMS. He has had a period of public service, and he has had an official relationship to the Government.

Mr. HERSEY. Do you think that in addition to the salary that the Congressman receives for his services as a Congressman he should be penalized further in this way?

Mr. SIMS. I do not consider it penalizing him. I consider that provision one that would take away a temptation that might lead him to act in opposition to the best interests of the Government.

Mr. FOSTER. I was thinking of your reference to district attorneys and assistant district attorneys. What reason is there for passing a law that would deny the district attorney when he goes out of office the right or privilege of defending a person who has been indicted for a crime committed since such district attorney left his office, but during this three-year period?

Mr. SIMS. You mean as against the Government?

Mr. FOSTER. Yes.

Mr. SIMS. This bill does that.

Mr. FOSTER. I was not asking what the bill does, but do you know of any reason why we should favor a law like that?

Mr. SIMS. As I said before, I did not come here to oppose the bill.

Mr. FOSTER. It seems to me that that would be an unreasonable rule. For instance, suppose the district attorney at Cleveland, Ohio, should go out of office on January 1 of next year, should we say that he could not defend a man indicted by the Federal grand jury in Cleveland, Ohio, for three years after his retirement from office, when the indictment may have been for a crime committed six months after he went out of office?

Mr. WALSH. Would that be a claim against the Government?

Mr. SIMS. If it were related to the internal revenue or something of that sort, it would be a matter against the Government. I will tell you what I have heard in that regard: I have heard that quite a number of young attorneys took those positions in order to qualify for that sort of practice and have then gone out to secure cases of that sort, but I do not know this of my own knowledge.

Mr. FOSTER. It seems to me that when a Member of Congress, who is an attorney, goes out of Congress he is still an attorney, and his oath as an attorney is presumed to still be in effect. He is an officer of the court and his oath is presumed to be effective. Now, if you, by virtue of your service on the Committee on Claims, have superior knowledge as to what should be done in the handling of those claims and you are still under oath as an attorney and officer of the court, I can not see how the interests of the Government could be hurt, if you live up to your oath as an officer of the court.

Mr. SIMS. Why would not the same thing apply to a man while he is a Member of the House? Why does that thing become heinous and infamous while he is in office and then become all right as soon as he leaves office?

Mr. FOSTER. I do not think it does. I think we should have a law that would prohibit any person from proceeding against the Government under conditions and circumstances where he would have the advantage of knowledge of confidential communications. I think that should be the limit, and when you go beyond that, I would like to have the reason for it.

Mr. SIMS. Well, if you take the whole body of employees in the Treasury Department or the whole body of employees in the Bureau of Internal Revenue, you will see that they can not possibly all have confidential communications or information. Now, would you make this provision apply to all of those employees, or would you make it apply only to those employees who actually did have confidential information?

Mr. FOSTER. If you would have it relate to those cases pending in the department in which he was employed, it seems to me that it would be broad enough.

Mr. SIMS. I think that would be altogether impracticable.

Mr. FOSTER. Suppose the bill should provide for the period during which he was employed in the department? Would that cover it?

Mr. SIMS. I think that when you are undertaking a restrictive measure you had better make it general enough to cover every man who is within the reason and purposes of the act.

Mr. FOSTER. I do not like to go on the assumption that every attorney is a crook and that he does not mean it when he says that he is an officer of the court, and when he goes out I think you can make the terms broad enough to cover any evil.

Mr. SIMS. When Congress made it a felony for a Member of Congress, while a Member, to practice before the Court of Claims that was not on the assumption that he was a crook.

Mr. FOSTER. Mr. Reavis, what is your idea as to the theory of that?

Mr. REAVIS. The theory of that, as I understand, was that if he were an employee or officer of the Government, that while he was representing the Government as an employee or officer he should not be permitted to appear in any case antagonistic to his employer, but that when he is out of Congress he is no longer an employee of the Government.

Mr. SIMS. That is one thing I want to comment on. There is plenty of profitable practice for ex-Senators and Members without having anything to do with claims against the Government, or suits or actions in which the Government is actually or indirectly a defendant. Now, we passed the railroad bill, and that provided for a six months' guaranty. The guaranty was that the net return should be equal to the net return to the railroads for a like time while they were under Government control. The question came up and is up now, or, I think, it has been settled in favor of the railroads, that the net income excludes claims for loss and damage, for torts, for wrongs, arising during the guaranty period. Now, we voted for that bill. Why should we be permitted, then, to go and take a lot of cases for loss and damage against the railroads, when it is equivalent to a direct appropriation out of the United States Treasury, during the six months' guaranty, to pay those claims?

Mr. REAVIS. I would rather ask you why they should not be permitted to do it.

Mr. SIMS. They could be permitted to do it, but would it not be against the Government?

Mr. REAVIS. Surely; but why should they not be permitted to do it? They are no longer officers of the Government, and they understand the law. That being so, would you deprive the railroads of the opportunity of employing men who understood the law or the subject matter that was the cause of the action?

Mr. SIMS. Let me say another thing—and this will apply to some ex-Members, no matter whether their names are mentioned in the bill or not, because some of them have become executive officers since becoming ex-Members. There are claims amounting to $500,000,000 or more in the hands of the Alien Property Custodian, and they have to be disposed of as Congress may order. They are not directly claims against the Government, but they are in Government charge, Government care, and Government protection. If a man were a Member of the House and then afterwards Alien Property Custodian, or connected with that service, and then afterwards Attorney General of the United States, this bill would cover him as Attorney General of the United States but would not cover him as Alien Property Custodian or official. Why? Because he may have been out of such office over three years.

Mr. REAVIS. So far as the limitations are concerned, if he is out over three years it would not cover him—that is, if the bill remains as it is now—but the Attorney General's suggestion was to strike out that limitation.

Mr. SIMS. And have no limitation?

Mr. REAVIS. Yes; and I am somewhat persuaded there is something to that, provided certain other restrictions are made in the bill. But the bill would cover the Alien Property Custodian or anyone connected with a department of the Government for the period defined by the bill, would it not?

Mr. SIMS. I should think so—for that period—but it would not answer all purposes, because it would apply to him as Attorney General but would not apply to him as Alien Property Custodian, where the greatest number of cases may arise.

Mr. REAVIS. The only reason it would not apply is because of the three-year limitation?

Mr. SIMS. Yes.

Mr. REAVIS. If that is stricken from the bill it would apply to him, would it not?

Mr. SIMS. I think so; yes. Now, look at the penalty of this bill. Remember, I am not criticizing but I am——

Mr. HERSEY (interposing). You have recently gone out of Congress?

Mr. SIMS. Yes.

Mr. HERSEY. And while in Congress you were a member of the Committee on Interstate and Foreign Commerce?

Mr. SIMS. Yes; for 12 years.

Mr. HERSEY. And you no doubt have obtained—and I know you have obtained—a lot of valuable experience as a member of that committee in regard to transportation matters and problems connected with the railroads.

Mr. SIMS. I hope so: at least I tried to do so.

Mr. HERSEY. Being out of office, it seems to me you might be valuable to the railroads as counsel in a claim even against the Government, and how could you injure the Government in a claim against the Government by giving any secrets, because you have obtained no secrets?

Mr. SIMS. No.

Mr. HERSEY. And you obtained no experience except that which any man in public life could obtain?

Mr. SIMS. No.

Mr. HERSEY. Having obtained that experience, why should not the railroads have the benefit of your experience? Why should not the committees of Congress have the benefit of your experience, and why should not the courts have the benefit of your experience?

Mr. SIMS. Well, I will not say that they should not have it; but suppose as a member of that committee, as I was for a long time, I advocated legislation, and supported it, antagonistic to the railroads, do you think they would ever employ me? But the difficulty is that there might be a temptation for a man, if he is expecting to be in private practice after he leaves Congress, to act in such a way while in Congress as to obtain clients after he is out, and that is the temptation I propose to remove.

Mr. FOSTER. How would you prejudice the interests of the people of the United States or mislead the courts by that employment? That is the point I keep before my mind.

Mr. SIMS. I do not think this thing is needed so much for the courts, because the courts are very different from commissions, from adjustment boards, and things of that sort. Now, look at the penalty. After prescribing the period of imprisonment and the fine the bill provides:

"And, moreover, shall thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States and to be forever barred from practicing before any department, board, court, commission, or bureau of the United States."

That is equivalent to a sentence of infamy, the same as being guilty of larceny or burglary, and it is so drastic and the penalty is so terrible as to necessarily carry with it the imputation of moral turpitude. But this bill is not confined to cases where the parties themselves have acted contrary to their official duties. You know and I know, after long service in the House of Representatives, that men are given credit for knowing a great deal they do not know, and you know and I know that is so when we find a large number—and I speak freely—of ex-Members and Senators practicing in Washington who never dreamed of practicing here after they had completed their congressional service as a reason for seeking the office. Look at what this will do. Pass this bill as it is and you will help every ex-Member who is practicing here, for this reason: He has had an official relationship which gives him character, standing, and consideration that he would not otherwise have, and I am not putting these things on the ground of corruption or wrong intention at all. It is only upon the theory that his official service has been such as will cause claimants to believe that he can be of greater service to them than others who have not had such service. But why permit that and then turn around and penalize some man in a bureau whom we may have personally recommended for appointment? Punish him all you want to for his individual and personal conduct, but if you make it a class take in all classes to which the reason of the bill would apply, because if you made it apply to all those who had had any relationship with the Government except ex-Senators and Members it would be to our benefit to have this bill passed.

I did not expect to take more than five minutes, but the Members have asked me some pointed questions. I want to say, however, that I have not been asked by any human being to come here and make this statement, and I have no personal interest in it, directly or indirectly, to serve.

Mr. REAVIS. This is really a statement against your own personal interests.

Mr. SIMS. That is what I thought about it, but personal interest should never be an excuse for a man failing to perform his public duty as he sees it.

STATEMENT OF MR. OLIVER A. PHELPS, FENDALL BUILDING, WASHINGTON, D. C.

Mr. PHELPS. I am an attorney in Washington, D. C., admitted to practice before the courts of the District of Columbia, the Court of Claims, the Supreme Court of the United States, and the various departments of the Government. I want to appear here to condemn the passage of one of the meanest bills that was ever drafted, and I say that without fear of successful contradiction. In the first place, it is absolutely unconstitutional; it is class legislation, and it is legislation against a class of [illegible] in some capacity.

In the seventh volume of Cyc, with which you gentlemen are all familiar, at page 185, the definition of class legislation is given as—

"Such legislation as denies rights to one which are accorded to others, or inflicts upon one individual a more severe penalty than is imposed upon another in like case."

The Supreme Court of the United States, in the case of Gulf Co. *v.* Ellis, reported in 165 United States, at page 150, says:

"The mere fact of a classification is not sufficient to relieve a statute from the reach of the equality clause of the fourteenth amendment of the Federal Constitution, but the classification must be based upon some reasonable ground, some difference which bears a just and proper relation to the attempted classification, and is not a mere arbitrary [illegible]."

Mr. REAVIS. I would like to get a little more of your history than you have given. Have you been connected with any of the departments?

Mr. PHELPS. I have; yes.

Mr. REAVIS. With what one?

Mr. PHELPS. With the Department of the Interior. I will be glad to give you my history.

M. REAVIS. How long since did you sever your connection with the Department of the Interior?

Mr. PHELPS. I will tell you where I was hit. I was an officer during the war and I am hit here; I was hit in the Army appropriation bill of July 11, 1919.

Mr. REAVIS. When did you sever your connection with the department?

Mr. PHELPS. On December 15, 1920—last December. Again, in the case of the Butchers' Union *v.* Crescent City Co., reported in 111 United States, at page 746 the court said:

"The liberty of pursuit, the right to follow any of the ordinary callings of life, is one of the privileges of a citizen of the United States of which he can not, under the fourteenth amendment, be deprived by legislation."

And here you are trying to deprive people of that very thing.

Mr. REAVIS. I do not think any member of the committee will dispute those general legal propositions.

Mr. PHELPS. Now, you go further than that, and when I say "you," of course, I do not mean any of the individuals around this table. I have not the pleasure of the acquaintance of a single one of you, and I am not holding you gentlemen responsible for the legislation. The language of this bill says: "Pertaining to or arising under any such department, court, commission," and so on.

How can a claim against the United States arise in a court? It never does arise in a court. The claim has to arise out of a contract, either express or implied, of fact or of law. That is the way claims arise, and they do not arise in a court. You try to deprive a man who has been acting in the employment of a court, and an attorney who has been selected by a court as amicus curiæ would come under this. Since when did Congress get its authority to legislate as to who should or should not practice before the courts of the United States?

Mr. WALSH. You realize that there is a statute on the books to that effect, do you not?

Mr. PHELPS. I realize that there is a statute on the books with reference to the Court of Claims pertaining to men who are in the service of the Government, but I mean men who are on the outside.

Mr. WALSH. Are you familiar with section 190 of the Revised Statutes?

Mr. PHELPS. I am.

Mr. WALSH. Is that confined to the Court of Claims?

Mr. PHELPS. No, sir; it is not.

Mr. REAVIS. Do we not fix the qualifications of a practitioner before the United States Supreme Court?

Mr. PHELPS. You do not, sir.

The CHAIRMAN. Is there any reason why we should not?
Mr. PHELPS. Yes, sir.
The CHAIRMAN. Is there any Supreme Court case on the subject?
Mr. PHELPS. Yes, sir.
The CHAIRMAN. Can you give it to us?
Mr. PHELPS. Yes, sir.
Mr. FOSTER. Now?
Mr. PHELPS. Yes; right now.
Mr. REAVIS. Can anyone be admitted to practice before the United States Supreme Court who has never been admitted in the district Federal court?
Mr. PHELPS. Yes, sir. There is a Supreme Court decision to that effect, but I do not have it with me, because I did not think it would be necessary.
Mr. REAVIS. That formerly was the rule, but I do not know how it is now.
Mr. PHELPS. Yes, sir. The Supreme Court has held that, and it held it in a case where an attorney was disbarred from practicing before—I have forgotten whether it was the United States district court or the United States circuit court, but one of the inferior United States courts—the Supreme Court held that it had the right itself to determine who should practice before it without regard to the other courts. Now, perhaps this citation may throw some light upon the subject. In the case of Ex parte Robinson, reported in Nineteenth Wallace, at page 505, Mr. Justice Field delivering the opinion of the court, said:

"The power to disbar an attorney is possessed by all courts which have authority to admit attorneys to practice."

And let me call your attention right there to the fact that any court not having the authority to admit attorneys to practice has no authority to disbar them, but only courts which can admit can disbar. Then he goes on to say:

"But the power can only be exercised where there has been such conduct on the part of the party complained of as shows him to be unfit to be a member of the profession, and before judgment disbarring him can be rendered he should have notice of the grounds of complaint against him and ample opportunity of explanation and defense."

Does he get that by the terms of this bill? No. Now, again, in the case of Ex parte Burr, reported in Ninth Wheaton, at page 529, Mr. Chief Justice Marshall, for the court, said:

"In a regular complaint against an attorney charges can not be received and acted on unless made on oath."

Is there any provision for that in this bill?
Mr. REAVIS. You contend that this bill provides for disbarment?
Mr. PHELPS. I do, sir.
Mr. REAVIS. A disbarment, as I understand it, is a separation. After a man has been admitted to the bar it is a separation from the bar, while this is merely to prevent practice along a given line.
Mr. PHELPS. All right. What does it say at the end of the bill if he indulges in practice against that given line, that he—

"Shall thereafter be incapable of holding any office of honor, trust, or profit under the Government of the United States, and to be forever barred from practicing before any department, board, court, commission, or bureau of the United States."

Is not that disbarment?
Mr. REAVIS. That is simply to prevent him from practicing in certain courts.
Mr. PHELPS. That is absolute disbarment, sir.
Mr. WALSH. Do you contend that Congress has no authority to prescribe the terms under which an attorney may be disbarred if he violates a statute of Congress?
Mr. PHELPS. From a court, yes, but from a department, no.
Mr. WALSH. You say we have no right to pass a statute the violation of which will prevent a man from practicing before the district court of the United States
Mr. PHELPS. Absolutely, sir. The Congress has no authority to do that.
The CHAIRMAN. Where is your authority?
Mr. PHELPS. Right here; I have just read it to you:

"The liberty of pursuit, the right to follow any of the ordinary callings of life, is one of the privileges of a citizen of the United States."

The CHAIRMAN. But you can punish men when they violate the statutes?
Mr. PHELPS. I know, but it says here they can not be deprived by legislation of certain privileges. Now, I will tell you what you do in this bill. You pass this act and you make it so that if I try a claim, and I want to say, gentlemen,

that for the last 15 years I have been practicing on claims before the departments and I have practiced before the Committee on Claims, of which Mr. Sims was at one time chairman; I practiced on those things for a number of years, but I have been deprived of that practice by just such legislation as this, and now you are striving to make me a felon if I continue that practice before I am able to go to the Supreme Court of the United States and try out the constitutionality of the questions involved.
Mr. HERSEY. It is only as to a claim in a department in which you were previously employed.
Mr. PHELPS. It is broader than that. Suppose I do it before a court by which I was formerly employed? I would place myself within these provisions if I try to make an honest living by honorable practice, and I have yet to have any court or any committee or any bureau find one bit of fault with my practice, and my standing is good before them all to-day.
Mr. REAVIS. I would be glad to have you point out what provision in the bill would prevent you from practicing before any Government department if you had not been connected with the department.
Mr. PHELPS. If I had not been connected?
Mr. REAVIS. Yes. In reply to Mr. Hersey's question you said the bill was broader than that, and that you would be prevented from practicing before departments other than those with which you had been connected. I want you to point that out.
Mr. PHELPS. Why, certainly.

"It shall be unlawful for any person appointed after the 1st day of January, 1918, as an officer, clerk, or employee in any department, court, commission, board, or bureau of the United States to act as counsel, attorney, or agent for or in relation to any claim against the United States, pertaining to or arising under any such department, court, commission, board, or bureau of the United States in which such person was employed and with which he was officially connected."

Mr. YATES. "Or with which he was officially connected."
Mr. PHELPS. That is right. "Or with which he was officially connected." It has been pointed out to you heretofore that if I take one of those cases on appeal I come within the provisions of the bill. Perhaps the claim has originated in the department with which I was connected—I was in the War Department—and it is a just claim against the United States. The man who handled that claim has not had experience, we will say, before the Court of Claims, and he comes to me and he says, "Mr. Phelps, I want to have you prosecute this before the Court of Claims, because you are familiar with the practice," but I am barred from doing that.
Mr. REAVIS. Again let me ask you, what provision in this bill would deprive you of the right to represent a client having a claim against the Government if the claim that was the issue in controversy did not arise in the department with which you were connected?
Mr. PHELPS. Possibly it would not.
Mr. REAVIS. That is what I thought.
Mr. PHELPS. Possibly it would not; but why should it? If I am employed by a department—and I was employed by the Department of the Interior for a number of years, and I found this old statute, which this is supposed to amend, against me for two years. That statute said particularly those claims which were pending before the department at the time I was employed by that department. Within a week after my resignation from the department had become effective I appeared before that department and filed a brand new claim, which had not been before that department; there were other claims there which I could have had and which would not have been questioned had I taken them, but I tried my best to comply with the law. I worked out of that in two years and built up a practice in spite of it. In the fall of 1917 I was offered a major's commission in the Judge Advocate General's office of the United States Army. I refused to take it for the reason that I had once worked out of the two years' inhibition laid down in the old statute, and I verily believed that the Judge Advocate General's office, being the law section of the Army, would probably be called upon to decide a great many legal points growing out of the purchase of war supplies. Therefore I refused a major's commission and turned it down.

I was in the Spanish-American War, and when a man has once worn the uniform of his country, when another war is on he can not stand still until he gets in again. I was beyond the age limit to go into the training camp. In

the summer of 1918 the Ordnance Department was given authority to guard its own arsenals and manufacturing plants, and at that time I obtained a captain's commission and went into the Army. Then, on the 11th day of March, 1919, I was ordered—not of my own volition, but I was ordered, and everybody knows that an officer must obey orders—to Washington to report to the Chief of Ordnance for duty. I reported to the Chief of Ordnance, and I was seated at a law desk in the advisory section of the Ordnance Claims Board, passing upon the legality of war claims that were presented. While I was sitting there doing that work Congress passed the act of July 11, 1919. Then I found that I was up against this proposition. This provision was a rider upon the Army appropriation bill, headed "Prosecution of claims by former Government employees," reading as follows:

"That it shall be unlawful for any person who, as a commissioned officer of the Army, or officer or employee of the United States, has at any time since April 6, 1917, been employed in any bureau of the Government and in such employment been engaged on behalf of the United States in procuring or seeking to procure supplies for the Military Establishment, or who has been engaged in the settlement or adjustment of contracts or agreements for the procurement of supplies for the Military Establishment, within two years next after his discharge or other separation from the service of the Government, to solicit employment in the presentation, or to aid or assist for compensation in the prosecution of claims against the United States arising out of any contracts or agreements for the procurement of supplies for said bureau, which were pending or entered into while the said officer or employee was associated therewith. A violation of this provision of this chapter shall be punished by a fine of not more than $10,000 or imprisonment for not than one year, or both."

Mr. WALSH. Do you contend that that is unconstitutional?

Mr. PHELPS. I do; but I contend that that became the law, and before it was possible for me to try out the constitutionality of that law, I would have to place myself within the penalty.

Mr. WALSH. Do you think that if you had a claim that came upon your desk, which comprised a great many intricate details with reference to the supply of materials, and that if you were engaged in going over that claim, and then became separated from the service, that within a month you should appear against the department prosecuting that claim?

Mr. PHELPS. That is practically the same question that was asked of Mr. Sims. My reply is just this: If there is a claim against the United States the lawyer did not make it, nor did the clerk in the department make it, and if there is a just claim against the United States, the citizen who has that claim has a right to prosecute that claim. If he is in ignorance of the fact that he has a claim, as sometimes occurs in the case of rebates on final settlements, he has a right to be told of that, and the United States has no right to profit by its own wrong.

Mr. WALSH. Suppose you take the case I cited. I was taking a case where the claim was actually being examined by yourself with a view to its determination. I am assuming that you come into possession of all the facts with reference to that claim, and that you, on behalf of the Government, are combatting that claim. Now, suppose you become separated from the service, and two weeks later you appear as councel for that claimant: Do you think that is right?

Mr. PHELPS. No, sir. I will be just as frank with you as you would like. If you are sitting across the room with a claim on your desk at the same time that I am adjudicating claims, and I go out of the department to practice I know nothing about the claims on which you have been employed, and I believe I should have the right to represent that claimant.

Mr. WALSH. You think that it should be confined to the claims which you have been handling?

Mr. PHELPS. Most assuredly; yes, sir. I can not help a claim simply because I am familiar with it in the department. The claim is there. It is just simply a matter of ethics that you gentlemen have in mind with reference to my practicing with regard to a claim that I was handling in the department. Ethically, I would have no right to do that.

Mr. WALSH. Suppose your associate in that room was passing upon a claim which later had to come to your desk for approval or disapproval, or suppose you eventually had something to do with it, either to approve a recommendation or look into it further, or pass upon a recommendation made by somebody else. In that case do you think you could properly take that claim two weeks after leaving the service?

Mr. PHELPS. I have never believed that the judge of an inferior court, having passed judgment on a claim and it having been appealed to a higher court, has the right to resign his judicial position and prosecute that claim before the higher court. I think that answers your question, does it not?

Mr. WALSH. In the enactment of a law, do you think that this committee or Congress should discriminate as between officers and employees?

Mr. PHELPS. Congress does not have to discriminate. There is plenty of law and plenty of authority at the present time to take care of that condition.

Mr. WALSH. Tell us how.

Mr. PHELPS. Under the act that you are at the present time seeking to amend——

Mr. REAVIS (interposing). The two years' limitation act?

Mr. PHELPS. That is section 190 of the Revised Statutes.

Mr. REAVIS. The act prescribing a two-year limit?

Mr. PHELPS. Yes, sir.

Mr. REAVIS. Let me ask you one question in connection with that before you answer Mr. Walsh's question: You have cited a number of authorities laying down certain legal principles and disclosing the unconstitutionality of this act as being class legislation. Now, is it any more unconstitutional than the two-year limitation act; and if so, in what respect?

Mr. PHELPS. I have not the language of that act before me.

Mr. REAVIS. That act prohibits a certain class from prosecuting claims within a certain time.

Mr. PHELPS. Yes, sir; that goes as far as it is necessary.

Mr. REAVIS. I am not talking about the necessity for it, but I asked you whether this proposed bill is any more unconstitutional than that act, and do not the citations you have given, or have endeavored to give, to the committee apply to that act as well as they do to this bill?

Mr. PHELPS. No, sir; because you make this criminal.

Mr. REAVIS. Then the unconstitutionality of this bill does not lie in the fact that we are legislating for a class, but it is because it has a penalty attached to it.

Mr. PHELPS. It is both.

Mr. REAVIS. How is it any different from the act you have referred to, with reference to its being class legislation?

Mr. PHELPS. This is just as unconstitutional as the other. That is the exact point tried out in the Supreme Court.

Mr. REAVIS. You have stated to Mr. Walsh that you have not had time to try out the limitation put upon the military appropriation bill, and at the same time you stated that you had religiously and scrupulously observed the old act for years.

Mr. PHELPS. I did.

Mr. REAVIS. Why did you not try it out?

Mr. PHELPS. Simply because I could not afford to put myself in the criminal class, and neither can any lawyer.

Mr. REAVIS. Why would an attack upon the constitutionality of that amendment put you in the criminal class?

Mr. PHELPS. You can not try the constitutionality of a measure before the Supreme Court of the United States, which has original jurisdiction of constitutional questions, unless you put yourself within the law you are attacking or the law you are attempting to try out the constitutionality of. That is one of the rules of the Supreme Court of the United States.

Mr. REAVIS. How would you make of yourself one of the criminal class by attacking the constitutionality of that measure?

Mr. PHELPS. It was never necessary to try out the constitutionality of that act, and for that reason it did not go to the Supreme Court of the United States. In the Wedderburn case, which was tried and determined in the court of appeals in the District of Columbia, I have not the citation, but I can procure it for you, the holding of the court in that case was to the effect that the head of a department had the exclusive right to say who should and who should not practice before it, and that was never taken to the Supreme Court of the United States. I have talked a little bit longer than the time allotted to me, and I think you have gotten my viewpoint. I think you have my reasons, and, unless there are some questions you want to ask me, I will thank you for giving me this hearing.

Mr. REAVIS. The committee is much obliged to you.

STATEMENT OF MR. L. C. MANSON, ATTORNEY AT LAW, WASHINGTON, D. C.

Mr. MANSON. Mr. Chairman, about a year ago, or something over a year ago, I was retained by the general counsel of the United States Shipping Board Emergency Fleet Corporation to look after one matter or one claim against the Emergency Fleet Corporation, arising in the city of Seattle, Wash.

Mr. REAVIS. You were appearing on behalf of the Fleet Corporation?

Mr. MANSON. I am appearing against this bill.

Mr. REAVIS. In that instance you have referred to, you appeared for the Emergency Fleet Corporation?

Mr. MANSON. Yes, sir; I did.

Mr. FOSTER. What was the claim?

Mr. MANSON. It was the claim of the Sloan Shipyards Corporation, involving about $3,500,000. My connection with that matter was severed last December. I am not citing my own case because I think this committee should take any special action in my behalf, but I mention it simply as an illustration, or as what I believe to be a typical case that will be effected by this bill.

Now, recently a firm of attorneys was retained in Seattle to handle some litigation collateral to the litigation which I handled, and the other day I had an inquiry from one of the members of that firm asking me whether I would consider being retained to assist in the trial of that case, which is against the Government. My situation is this, that if I assist in the trial of that case——

Mr. REAVIS (interposing). Is it a different case?

Mr. MANSON. It is a different case.

Mr. HERSEY. It is a collateral case growing out of the same thing?

Mr. MANSON. Yes, sir. Now, if I should give the Government the benefit of what I know about that situation out there and assist in the trial of the case, I would disbar myself under the provisions of this bill from handling any other matter arising out of the United States Shipping Board.

Mr. HERSEY. Why should that be?

Mr. REAVIS. You have been connected with no department, have you?

Mr. MANSON. I have been connected with no department.

Mr. REAVIS. You are a practicing lawyer?

Mr. MANSON. Yes, sir.

Mr. REAVIS. And the Government sought your assistance in connection with that matter?

Mr. MANSON. Yes, sir.

Mr. REAVIS. And the litigation was prosecuted 3,000 miles from the seat of government?

Mr. MANSON. Yes, sir.

Mr. REAVIS. Now, you say that under the terms of this bill you would subject yourself to the penalty if you should act as counsel in a matter antagonistic to the Government with reference to the Emergency Fleet Corporation?

Mr. MANSON. That is my opinion.

Mr. HERSEY. Not the same matter?

Mr. MANSON. No, sir.

Mr. REAVIS. It does not make any difference whether it comes out of the same case or not, the construction that the witness places on this bill is that under the terms of this bill, having been an officer or employee of a certain department of the Government, he subjects himself to the penalties of this bill if he appears against the Government.

Mr. CHANDLER. How long is it since you have been connected with this case?

Mr. MANSON. My retainer was on the per diem basis.

Mr. CHANDLER. How long ago was it?

Mr. MANSON. About seven months ago my connection with it ceased. I will say that I am not considering taking a retainer on the other side, but on the same side.

Mr. HERSEY. I understood that you were talking about appearing against the Government?

Mr. MANSON. No, sir; but I do say that under this bill, if this bill should pass, because I gave my service to the Government in that case—and I had absolutely nothing to do with any other matter in which the Government was interested—I would be thereby barred from representing any claimant who has any claim arising against the Shipping Board for three years.

Mr. HERSEY. That is your construction of it?

Mr. MANSON. Yes, sir. If I should consent to aid the Government again, as I believe I may be requested to do, perhaps six months from now or a year from now, I would have started those three years' running all over again.

Mr. CHANDLER. Do you not think this law, if it should be relieved of its retroactive and ex post facto features, would probably protect you? You have not done anything wrong up to the present time?

Mr. MANSON. No, sir; I have not; but if I should take a retainer to represent some claim arising out of the Shipping Board I would violate this law. In other words, I would have suffered the penalty automatically by the passage of this act by being disbarred from practicing for three years in the matter of claims connected with the Shipping Board, although I do not know a blamed thing about any of them except this one particular matter.

Mr. REAVIS. If you subject yourself in any manner at any time to the penalties of this bill you are disbarred from all Federal practice?

Mr. MANSON. Yes, sir; that is right.

Mr. REAVIS. You would not only be disbarred from the Shipping Board——

Mr. MANSON (interposing). If I had taken a case, or if I represent any client in a matter pertaining to the Shipping Board who has any interest adverse to the Government, or if I now take such a case, I would subject myself to the penalties of this bill.

Mr. CHANDLER. Will the gentleman answer this question: Is he opposed to the bill aside from his personal interest in it?

Mr. MANSON. I believe in the purposes of the bill; I think that the purposes that the bill seeks to accomplish are good ones.

Mr. FOSTER. What are those purposes?

Mr. MANSON. The purpose that I would advocate is to prevent lawyers or other employees of the Government from using confidential information against the Government. I believe that that is a good purpose. If, however, the bill is to disbar and penalize a class of men who have been decent enough during the last few years to serve the Government when the Government was circularizing the country for lawyers to serve it, then I do not think it is a good bill.

Mr. CHANDLER. The appeal that you are making is not made upon personal grounds alone, but you are representing a class?

Mr. MANSON. Yes, sir. I am using my own case as an illustration.

Mr. CHANDLER. How numerous is this class?

Mr. MANSON. I have no way of determining, but I know that a great many lawyers throughout the country have been called into the Government service in the same way that I was. I believe there is a great number of them.

Mr. CHANDLER. You admit, however, that no measure serving a general beneficent purpose should be turned down because it might inconvenience a few men?

Mr. MANSON. I admit that, and I make no appeal to this committee to protect me, so far as that is concerned. I think that where the public good is at stake, the public good should be served, but I believe that the public good can be served and that the purposes of this law can be accomplished without doing harm to anybody.

Mr. FOSTER. Did you serve for a per diem on the Pacific coast or in the East?

Mr. MANSON. On the Pacific coast.

Mr. REAVIS. Let me ask you this question, bearing upon the practical operation of this bill if it should be enacted as it now stands: How many high-class lawyers do you think the Government could employ in the future, after the enactment of this bill, if they realized that such employment would absolutely and forever bar them from representing any claims or cases against the Government?

Mr. MANSON. I do not think you could ever employ any. I do not know whether I should be placed in the class that you have described, as being a first-class lawyer, but I know you could not employ me again. However, I do believe that the purpose that has been discussed here is a good one. I know something about the internal workings of these departments, and I know that there is not a lawyer in any one of them who has handled any matter where that matter does not bear the earmarks or evidence showing that he has had his hands on it. I think if you pass a bill that will make it an offense for any man to represent any claim, or to assist in the prosecution of any claim that he has been officially connected with or which has come under his jurisdiction it would meet the situation. In other words, take any of the Government departments, and if a lawyer has had any matter in that depart-

ment before him, there is something in the record to show that fact. The general counsel or the chief law officer there may not have direct connection with it, but it comes under his jurisdiction.

Mr. REAVIS. You said that if we passed such a law——

Mr. MANSON (interposing). If you pass such a law as that, you will do away with the wrong. I would pass a law providing, in effect, that no officer, employee, or clerk shall represent any claim or be connected with the prosecution of any claim against the Government with which such officer, clerk, or employee was officially connected as an employee, clerk, or officer of the Government or which came under his jurisdiction as such officer, clerk, or employee.

Mr. REAVIS. Let me make this suggestion: There were two cases, one in particular, that came to my attention in such manner that I am not able to reveal. One was a case where an employee of the Government had nothing to do with the claim, and there would be no record that that claim ever was in his jurisdiction or that he had ever touched it, but he was responsible for the formulation of the principle which controlled that claim and the disposition of other claims or of many other claims of a similar character. Now, the moment he got that principle established he left the department and collected those claims under a principle which he himself had formulated. He had not touched the claims, and therefore the law you have suggested would not touch him.

Mr. MANSON. Yes; but that is the same situation that the Congressman would be in. He would be in the same situation as the former Congressman who while in Congress voted for an act of Congress which gave rise to the claims. Now, then, I say that that class of cases is so exceptional that you could not pass legislation that would reach them all. You could not pass legislation that would cure all of the evils of government, and that particular class to which you have referred is so exceptional that, in my opinion, it does not constitute a menace. If a Congressman votes for a bill which gives rise to claims against the Government, there may be some ethical reason for his being precluded from representing claimants who thereafter file such claims.

Mr. REAVIS. That might be true if the advocacy of the Congressman was responsible for the enactment of the legislation, but the House, the Senate, and the President enact legislation. The mere fact that a certain Congressman may have introduced the bill does not fasten the responsibility for the passage of the bill upon that Congressman. Now, here is a case where the individual establishes the principle himself, or in the instance to which I have called your attention, the individual established the principle, and that, I think, was wrong because he then goes out of the department and takes advantage of his own acts.

Mr. MANSON. If he could establish a principle that would have application to all those claims, then, under the language that I advocated, he would be covered as having official connection with or jurisdiction over the matters. If a man is in a position to establish a principle which will govern a body of claims, then he has jurisdiction over them.

Mr. HERSEY. He might obtain information, while not having any jurisdiction over the claims, that would be detrimental to the Government.

Mr. MANSON. I think those instances in cases where the officer had no official connection or jurisdiction over the claim are very exceptional. I think you will find that to be the case. I do not believe there is any presumption that when a lawyer enters the Government service he lays his legal ethics aside. There are cases where they have done that, but I do not think those cases are numerous. I do not think there is any such presumption that when a man enters the Government service he lays aside his professional ethics. I do not think there is any such presumption as that when a man goes to Congress, nor do I think there is any such presumption when a man goes into one of the executive departments.

Mr. CHANDLER. Have you any way to determine by investigation, correspondence, or otherwise, or can you tell how many persons there are in your class who would be seriously affected by this proposed legislation?

Mr. MANSON. There are thousands throughout the country.

Mr. CHANDLER. How do you know that there are thousands of them?

Mr. MANSON. I know that the Department of Justice is to-day retaining men to do this same kind of work.

Mr. CHANDLER. You probably have been in service in connection with this litigation about six months, or you were involved in this matter for about six months?

Mr. MANSON. Yes, sir; I am out of it now.

Mr. CHANDLER. Would you, as a lawyer, lose valuable service if you had to draw out now, or would this bill have the effect of confiscating valuable services by compelling men to withdraw with no relief afforded them?

Mr. MANSON. Yes, sir. I know that at the present time there are some men communicating with me with a view to having me represent them in claims that have not been filed at all.

Mr. FOSTER. Did not Sloan & Co. have a dry dock?

Mr. MANSON. No, sir; they had a shipyard. They got about $1,700,000.

Mr. FOSTER. They had everything but a dry dock?

Mr. MANSON. Yes, sir.

Mr. FOSTER. Would you include in the thousands of cases like your own that you referred to awhile ago a case like this: Suppose the Attorney General should pull out and resign and should form a partnership with the head attorney of the Shipping Board and should represent a large number of shipbuilding concerns. Then suppose in comes a representative of the Government reporting that one of these concerns is insolvent within 24 hours after voting such insolvent concern a credit of $1,000,000; would that sort of employment come within the class you have described?

Mr. MANSON. It would be outside of it. Under such a bill as that I proposed here, a man who had been at the head of the law department of the Shipping Board would be barred from handling any claim against such board, because he had had jurisdiction over all claims before it.

Mr. FOSTER. And he ought to be.

Mr. MANSON. Yes, sir; but I do not think that a man who has been employed in an isolated case should fall within the same class.

Mr. FOSTER. Do you still think there are thousands of cases like that you have described?

Mr. MANSON. I think there is a vastly greater number of lawyers especially employed by the Government to handle isolated cases over the country than there are of men who have had jurisdiction over a large body of claims.

Mr. CHANDLER. Upon what ground do you base that statement? Is that a mere guess?

Mr. MANSON. No, sir.

Mr. CHANDLER. What is your ground for that statement?

Mr. FOSTER. Take the Sloan case, for instance; who else had any employment similar to your own?

Mr. MANSON. There is another firm of lawyers employed to assist in that matter.

Mr. FOSTER. The Shipping Board and the Emergency Fleet Corporation had attorneys regularly employed at Seattle for this purpose?

Mr. MANSON. No, sir; not at Seattle. Mr. Cosgrove was their local attorney, but he never had anything to do with this litigation except on the record.

Mr. FOSTER. Are you sure that Mr. Cosgrove did not appear before a House committee in connection with the Sloan case?

Mr. MANSON. That is true. I know that to be true, but he never had any jurisdiction over it.

Mr. FOSTER. He attended all the hearings, acted as counsel, and testified as such.

Mr. MANSON. I have no doubt that is so, and I should say that Mr. Cosgrove ought not to be permitted to handle any case that arose in that Seattle district, for the reason that all claims arising in that district came under his jurisdiction.

Mr. FOSTER. How about the Portland district? Would you say he ought to be allowed to prosecute those?

Mr. MANSON. He had jurisdiction there.

Mr. FOSTER. In other words, they all tied into Philadelphia, did they not? Seattle tied into Philadelphia and Portland tied into Philadelphia?

Mr. MANSON. Yes. My point is this: That anything that comes under a man—anything with which a man is officially connected or anything which comes under his jurisdiction—is something he should not touch in private practice.

Mr. FOSTER. What is the relative proportion of cases similar to your case as distinguished from other class of cases?

Mr. MANSON. I know that the Fleet Corporation employed many more lawyers for special work and are to-day employing many more lawyers for special work than they have employed in their general offices; I know that

to be true. I know that in Seattle Ben Moore—I do not know whether you know him or not—was employed as special counsel to handle a lot of criminal prosecutions out there arising out of claims.

Mr. CHANDLER. Is there any way of protecting your class? Had you thought of protection by having a provision in the bill to the effect that it should only apply to those who enter into contracts or enter into service after the passage of the act, therefore excepting men who have been six months in service, when no statute was in existence? In other words, providing against contracts and service of this kind in the future?

Mr. MANSON. Well, as far as I am concerned, it does not make much difference. If you pass this bill, I know you will not get any service out of me, and I can handle my own situation very readily.

Mr. CHANDLER. There would be no object in trying to protect two or three men; but if there is a great class of people who have honestly entered upon service of this kind and who would lose money by it and professional prestige, that is a matter for consideration.

Mr. MANSON. I know this, that if you had had such a law at the time I entered upon this service I would never have entered upon it. When a man accepts employment that involves confidential information he has obtained in the employment of another client he knows he is doing wrong, and, therefore, I do not object to your passing any legislation that will hit him; but when a man takes employment that does not involve that I do not think you ought to make it a crime without at least giving him an opportunity when he accepts the employment to know what the penalties are. The law of 1872 was not retroactive in the sense that the present one is. In other words, it did not affect anybody except those who were appointed after its passage. When I accepted my employment there was no such act as this: I did not believe that because I was handling a lawsuit the old act applied to me so as to bar me for two years—in the first place because it did not apply to the Shipping Board, and in the second place my employment was entirely outside of the general business of the board; but under this act it does apply. Now, I accepted that employment with no notice from Congress and without any law on the statute books that I might be barred from practicing before any department of the Government. If you want to pass a law that is as drastic as this, make it an offense for a man to engage in a class of practice that is morally wrong.

It is morally wrong to accept a case which involves facts that came to your attention as an employee of the Government. That is morally and ethically wrong; but it is not morally or ethically wrong for a man to go into cases that he knows nothing about, and with which he was not officially connected, and to pass a law to make it an offense for him to do that after he has entered the Government service and, perhaps, being disconnected from it, as in my case and in the cases of thousands of others, it seems to me is going rather a long way.

Mr. REAVIS. Your contention is that when a man takes a client and faithfully represents him he ought not to be forever barred from bringing a suit against that man?

Mr. MANSON. Yes. I have been in general practice for many years, and I remember that in several instances I represented a public utility, my services were discontinued, and then I sued them many times, and nobody ever questioned my doing so.

Mr. REAVIS. I think the committee would be glad to get over to the floor of the House, as it is about 12 o'clock. What is the disposition of the committee in reference to continuing hearings on this bill?

Mr. MICHENER. How long are these hearings liable to continue?

Mr. REAVIS. How many gentlemen are here who desire to be heard?

(There were no responses.)

Mr. MICHENER. That seems to settle it.

Mr. REAVIS. If there is no one here who desires to be heard, I do not see any necessity for continuing the hearings.

Mr. PHELPS. May I say just one word more, and that is, if you are not going to have another meeting of the committee, there is one point which, I think, should be borne in mind with reference to this legislation, and it is this: I have had it put up to me a number of times by clients who were formerly mine before I went into the Army. They said, "You can not take any claims now because you are barred by that statute." I said, "But that is only against the War Department or appearing before the War Department." They said, "No; that is against you, because other people are practicing on those claims before the War Department, therefore it is against you; and if we give you our claims to handle now it will so blacken them that we will never get them through." I wish the committee would bear that in mind when they are considering this bill.

(Thereupon the committee adjourned.)

WASHINGTON, D. C., *August 9, 1921.*

The JUDICIARY COMMITTEE,
House of Representatives.

Subject: Opposition to proposed amendment, in present form, to section 190, Revised Statutes.

SIR: I earnestly oppose the favorable report and passage, in its present form, of the proposed amendment of section 190 of the Revised Statutes, and in support of such opposition make the following statement, knowing full well there are others than myself on whom the proposed amendment will work a hardship, and consequently be eminently unjust and unfair.

I was a volunteer of the Spanish war, but having been physically unfit to enlist for the World War did the next best thing I could—obtained a civilian position with the Committee on Public Information. After the termination of hostilities and the discontinuance of the committee, responding to the urgent demand for examiners or auditors in the Internal Revenue Bureau, and further because of the fact that my law practice had suffered greatly in the meantime, I passed the civil service examination and accepted a position in the Capital Stock Division of the said bureau; five months' service there, however, being sufficient to convince me that I could not live on the salary paid. During this employment I never saw an income tax return, nor did I know a soul employed in that division of the bureau.) Resigning my position I resumed my law practice, then about totally lost, and after the lapse of more than a year a friend of mine in California recommended me to a San Francisco firm; a firm against which unquestionably illegal assessments have been made by the Income Tax Division. It is this company's claim for abatement that I am now prosecuting. As an evidence of my unfamiliarity with the location and arrangement of the income tax office I cite the fact that after having completed my brief in support of said claim I spent over half an hour in an effort to locate the proper parties before whom to argue the matter.

The proposed amendment, in its present form, will make a felon of me, if I make the slightest effort, directly or indirectly, to further prosecute this claim, after it becomes a law.

There is nothing fair about that kind of a law; absolutely nothing.

Certainly no one is more in favor of any law tending to safeguard the Government than I am, but this can be done without visiting an injustice upon those who go to make up the Government—the taxpayers and certain attorneys best qualified to represent them.

Thousands of dollars in taxes in excess of the amounts lawfully collectible have been paid the Government, while more thousands in assessments, illegal and consequently not properly collectible, have been levied. According to law the former are refundable and the latter abatable upon proper demand and showing.

The man who has been employed by the Government in this tax service is peculiarly fitted to make such a demand and showing in the prosecution of the claims, because he knows how to present the essential facts in the very beginning and thereby save both the Government and the taxpayer much valuable time.

In order, however, that no influence be used, or the Government otherwise taken advantage of by those heretofore employed in an office before which they practice let us see how far the law should go. Every right-thinking citizen wants it to go far enough to protect fully the Government.

In the first place Government employees are faithful and honest to a degree. There are, of course, some who are not, but they are few and far between. For this reason, instead of a former employee trying to take any advantage of a Government official he is more apt to do just the opposite, knowing as he does that the official is as well acquainted with the rules and regulations as he is and will resent any effort to claim more than what is absolutely just and proper. Consequently there is left but one fact that will aid the former

Government employee in taking any undue advantage of the Government in a matter of this kind, and that is a familiarity, from the Government's point of view, with the claim he is prosecuting. It follows, therefore, that no former Government official or employee should be allowed, either directly or indirectly, to prosecute a claim which was pending in the particular department or bureau at the time such official or employee was there employed, and he should be prohibited, not for two or three years, but forever from having anything to do with such a claim, and the law should provide a severe penalty.

That section 190 should be amended is apparent, and I hope it will be, but any amendment that goes further than just above stated will not benefit the Government but will work a great hardship on certain honorable attorneys and willing but improperly advised taxpayers.

The enactment of the amendment in its present form as against that just suggested can, so far as the Government is concerned, have only the effect of retaining to the Government thousands of dollars which do not belong to it, but which rightly belong to taxpayers, in many instances poor people, who, through mistake or unfamiliarity with the law, have paid in excess of the amount required, and why? Because of the fact that many lawyers and accountants who have not had practical governmental experience in this particular are unfamiliar with the Federal tax laws and regulations and prepare returns wrong or fail to advise clients properly; and the limitation of the field of attorneys to the taxpayer as by the proposed amendment in its present form is to cause the 2-year statute of limitations to run against many a just claimant before he shall be properly advised. Does the Government wish to keep money it is not under the law entitled to? Manifestly not. Then why enact the proposed amendment in its present form as over and above the amendment suggested? It can not possibly benefit the Government, while it will be unfair to certain attorneys and their clients. And, furthermore, it will have the effect of causing an attorney to hereafter hesitate before accepting a Government position. The Government is hard enough pressed now to secure the services of competent men without doing something to add to this already grave situation.

I trust the amendment will be made a law, but in such a form as to provide a heavy penalty for anyone found guilty of prosecuting a claim which was pending in the department, bureau, etc., while such person was there employed, and let such a person be barred from any participation, directly or indirectly, in the prosecution of any such claim, not for three years after he shall have severed his connection with such department or bureau but forever.

Respectfully,

EVERETT DUFOUR.

MSH # 22065

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TITLE